



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Information Notice

Mid-term Assessment: Regional Wholesale Central Access (WCA) Market

Re-application of geographic assessment criteria set out in ComReg Decision D10/18

Publication and notification to the European Commission (EC), the Body of European Regulators for Electronic Communications (BEREC), and Member State National Regulatory Authorities (NRAs) of draft measures under Article 32 of Directive 2018/1972

Information Notice

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Commission for Communications Regulation

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Additional Information

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1. This Information Notice concerns the Commission for Communications Regulation's ('**ComReg**') publication and parallel notification to relevant European authorities of its '**Draft Decision**' concerning its Mid-term Assessment ('**MTA**') of the Wholesale Central Access ('**WCA**') market in Ireland. A non-confidential copy of the Draft Decision is attached at Appendix 1 of this Information Notice.
2. In accordance with the requirements, at that time, of Article 6 of the Framework Directive (now Article 23 of the of the European Electronic Communications Code ('**EECC**')),¹ ComReg carried out a public consultation ('**Consultation**') on its analysis of the WCA markets in Ireland over the period 23 November 2020 to 15 January 2021.²
3. Prior to the adoption of a final decision, Article 32(3) of the EECC now requires ComReg to publish and, at the same time, make draft measures accessible to the European Commission ('**EC**'), the Body of European Regulators for Electronic Communications ('**BEREC**') and National Regulatory Authorities ('**NRAs**') in other Member States (the '**Article 32 Notification**').
4. The Article 32 Notification has today been made by ComReg on the basis of the draft measures set out in the Draft Decision.
5. Please note that this Information Notice, including the Draft Decision in Appendix 1, does not constitute a national public consultation and should therefore not be construed as an invitation to make submissions to ComReg.
6. Having completed the Article 32 Notification, ComReg will take utmost account of any views expressed by the EC, BEREC and NRAs in other Member States before adopting its final decision.

¹ Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the '**EECC**').

² On 23 November 2020 ComReg published its WCA Mid-term Assessment - Consultation and Draft Decision, ComReg Document 20/114 ('**Consultation**') available at: <https://www.comreg.ie/market-3b-mid-term-assessment-consultation/>

Appendix 1: WCA Mid-term Assessment Draft Measure

A 1.1 A copy of ComReg's Draft Decision is attached below.



Commission for
Communications Regulation

Mid-term Assessment

Regional Wholesale Central Access (WCA) Market

**Re-application of geographic assessment criteria
set out in ComReg Decision D10/18**

NOTE: THIS IS A DRAFT DECISION

Response to Consultation and Decision

Reference: ComReg 21/XX

Date: 20 October 2021

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Commission for Communications Regulation

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Redacted Information

Please note that this is a non-confidential version of the Response to Consultation and Decision. Certain information within the Response to Consultation and Decision has been redacted from the public version for reasons of confidentiality and commercial sensitivity, with such redactions indicated by the symbol ✂ and highlighted in BLACK. In some cases, ComReg has presented information in an aggregated form in order to strike a balance between preserving the confidentiality of operator-specific information whilst enabling interested parties to understand, in a meaningful way, the conclusions set out in the Response to Consultation and Decision.

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1 Executive Summary

Overview

- 1.1 On 19 November 2018, ComReg published its Response to Consultation and Decision in respect of its review of competition in the Wholesale Local Access ('WLA') and Wholesale Central Access ('WCA') markets (the '**2018 Decision**').¹ The 2018 Decision defined a national WLA market (the '**Relevant WLA Market**'), on which Eircom was designated with Significant Market Power ('**SMP**'). A full suite of remedies (or obligations) was imposed on Eircom on the Relevant WLA Market, having regard to its ability and incentives to engage in a range of conducts leading to identified competition problems.
- 1.2 The 2018 Decision also defined two relevant sub-national WCA markets, a '**2018 Urban WCA Market**' and a '**2018 Regional WCA Market**' (together, the '**2018 Relevant WCA Markets**'). Each such market corresponded to an identified set of Eircom Exchange Areas ('**EA(s)**').² Eircom was found to have SMP in the 2018 Regional WCA Market only, and accordingly had appropriate regulatory obligations imposed on it. Regulation was withdrawn from the 2018 Urban WCA Market following the expiry of a six-month sunset period.
- 1.3 The 2018 Decision indicated that ComReg would aim to carry out a Mid-term Assessment ('**MTA**') of the 2018 Regional WCA Market and issue a consultation on the preliminary findings of the MTA within 24 months of the publication of the 2018 Decision. ComReg published its consultation (the '**Consultation**') on 23 November 2020.³ This document is ComReg's final MTA Decision.
- 1.4 As set out at paragraph 1.65 of the 2018 Decision, the function of the MTA is to enable ComReg to capture the potentially dynamic nature of the 2018 Regional WCA Market. This is done through the reapplication of the geographic criteria used in the 2018 Decision to categorise each of the 1,203 EAs in the State according to the level of infrastructure competition, and group those EAs into the 2018 Urban WCA Market (which ComReg found to be competitive) or the 2018 Regional WCA Market (which ComReg found was characterised by the presence of Eircom SMP).
- 1.5 As set out at paragraph 1.65 of the 2018 Decision,

¹ Market Review: Wholesale Local Access (WLA) provided at a Fixed Location, Wholesale Central Access (WCA) provided at a Fixed Location for Mass Market Products. Response to Consultation and Decision (Decision D10/18).

² As defined in the 2018 Decision, the 2018 Urban WCA Market consisted of 154 EAs, while the 2018 Regional WCA Market consisted of 1,049 EAs.

³ Mid-term Assessment - Regional Wholesale Central Access (WCA) Market. Re-application of geographic assessment criteria set out in ComReg Decision D10/18. Consultation and Draft Decision (ComReg 20/114) (the '**Consultation**').

“Given the need for market reviews to be forward-looking (where possible), and the potential dynamic nature of the Regional WCA Market, given the ongoing rollout of the SIRO and Virgin Media networks and the potential for Access Seekers to increase their WLA-based footprints, ComReg intends to reapply Criteria 1 to 5 during the lifetime of the market review (and to consult within 24 months of the publication of this Decision) in order to examine the appropriateness of the continued imposition of regulatory obligations (the ‘Mid-term Assessment’). This could lead to, for example, the maintenance of existing regulation or its lessening or removal, as appropriate, in those Exchange Areas falling within the Regional WCA Market. Where regulation is to be lessened or removed, the sunset period discussed in Section 13 of this Decision would be applied.”

Relevant WCA Geographic Market Definition

- 1.6 As indicated in the 2018 Decision, the MTA re-applies the geographic assessment exercise originally set out and applied in that Decision, on the EAs constituting the 2018 Regional WCA Market only. The geographic assessment exercise takes the form of a two-step process, described at paragraphs 3.7 and 3.8 of the Consultation. Step 1 applies five geographic assessment indicators which are of general application, and which ComReg similarly applies in its assessments of other markets. These indicators assess whether EAs forming the 2018 Regional WCA Market are characterised by sufficiently differing conditions of competition such that it is suggestive of there being different geographic markets.
- 1.7 Where Step 1 suggests that EAs in the 2018 Regional WCA Market are, in fact, characterised by differing competitive conditions, ComReg then carries out Step 2. Step 2 consists of applying a set of criteria to determine which EAs should be grouped together on the basis of similarity of competitive conditions. The Step 2 criteria, listed at Table 29 of the 2018 Decision, are set out below:

Table 1: Step 2 Criteria for assessing competitive conditions in EAs

Absent regulation in the WCA Market
Criterion 1: An Exchange Area in which at least three Primary Operators would be capable, within a sufficiently short period, of providing WCA, WLA, or broadband services at the retail level to End Users; AND
Criterion 2: An Exchange Area in which Eircom would provide broadband services at the retail level to less than 50% of End Users; AND

Criterion 3: An Exchange Area where any Primary Operator(s) using third-party WLA inputs, if present, collectively provide(s) ⁴ retail broadband services to at least 10% of End Users; AND
Criterion 4A: An Exchange Area in which an Alternative Network Operator, if present provides, ⁵ or could provide, within a sufficiently short period, retail broadband services to End Users to at least 30% of the premises in that particular Exchange Area; AND
Criterion 4B: An Exchange Area in which any Alternative Network Operator(s), if present, collectively provide(s) ⁶ retail broadband services to at least 10% of End Users; AND
Criterion 5: Exceptionally, on a case-by-case basis, where an Exchange Area:
(i) fails no more than one of Criteria (2) to (4B) above, and fails the Criterion by a small margin (i.e. less than 10% of the percentage specified); ⁷ OR
(ii) fails no more than one of Criteria (2) to (4B) above, and where an Alternative Network Operator provides broadband services, either at the wholesale level or at the retail level, which equates to at least 60% of End Users, that Exchange Area will be deemed to have satisfied the relevant Criterion.

- 1.8 Additionally, as set out at paragraph 9.333 of the 2018 Decision, ComReg allows for Criteria 3,4A or 4B to be assessed on the basis, not of all Primary Operators, but of a subset of (n-1) Primary Operators present at that Exchange Area in certain limited circumstances.
- 1.9 Accordingly, Step 1 assesses whether the evidence suggests that competitive conditions between EAs differ. If so, Step 2 then matches EAs which demonstrate similar competitive conditions.

⁴ In this instance, 'collectively provides' means the provision of retail broadband services by one or more Primary Operators using WLA inputs, directly to End Users and/or indirectly to End Users via a WLA-based WCA service that is sold to other retail SPs. The 10% market share figure is satisfied by a single Primary Operator using WLA inputs, or by the sum of the market shares of all Primary Operators using WLA inputs.

⁵ 'Provides' means the provision of retail broadband services directly to End Users and/or indirectly to End Users via a WLA-based WCA service that is sold to other retail SPs. Thus, the 30% coverage figure is satisfied by a single ANO, even if two ANOs are present, but is not satisfied by the two ANOs having coverage which sums to at least 30%, where each individual ANO's coverage is less than 30%.

⁶ In this instance, 'collectively provides' means the provision of retail broadband services by one or more Alternative Network Operators, directly to End Users and/or indirectly to End Users via WCA service that is sold to other retail SPs. Thus, the 10% market share figure may be satisfied by a single Alternative Network Operator, or by the sum of the market shares of all Alternative Network Operators.

⁷ For example, the requirement for Eircom's market share to be less than 50% (Criterion 2) could be amended to 55% under Criterion 5 (i.e. 110% of the requirement set out in Criterion 2).

- 1.10 In applying Step 2, ComReg makes use of two concepts, Primary Operators ('**PO(s)**'), and Alternative Network Operators ('**ANO(s)**'). As set out at footnote 1617 of the 2018 Decision, a Primary Operator is a Service Provider ('**SP**') that can operate in the Relevant WCA Market and/or the retail market (directly or indirectly), absent regulation in the Relevant WCA Markets, in addition to having a sizable national (or regional) presence. POs form the set of SPs capable of exerting an effective competitive constraint on other competitors, and thereby potentially contributing to differing competitive conditions.
- 1.11 As set out at footnote 1620 of the 2018 Decision, an ANO is a PO that has a network that exists independently of WLA and WCA SMP-based regulation. It follows that such networks would likely exist absent regulation. At the time of the 2018 Decision, ComReg identified Virgin Media and SIRO as the only ANOs present on the 2018 Relevant WCA Markets.
- 1.12 Accordingly, in the 2018 Decision ComReg identified five POs (Eircom, BT, Vodafone, SIRO, and Virgin Media), two of whom (SIRO and Virgin Media) were also deemed to be ANOs. As detailed in Section 3 below, ComReg has considered whether it is appropriate, on the basis of the available evidence, to designate additional POs at this time, and has concluded that it is not appropriate to do so.
- 1.13 The outcome of the application of the Step 1 and Step 2 assessments (summarised in paragraph 1.6 above) to each EA in the State at the time of the 2018 Decision is set out at Table 2 below, which replicates Table 30 of the 2018 Decision. Those EAs passing all of the relevant geographic assessment criteria were deemed to fall into the 2018 Urban WCA Market, while those EAs failing one or more of the geographic assessment criteria, and not benefitting from the exceptions set out at Criteria 5(i) and 5(ii), were deemed to fall into the 2018 Regional WCA Market. The specific EAs falling into the 2018 Urban WCA Market and the 2018 Regional WCA Market are listed at Appendix 11 of the 2018 Decision.

Table 2: Assessment of competitive conditions by geographic area, Q4 2017

2018 Relevant WCA Markets	EAs	Premises	Subscriptions
2018 Urban WCA Market	154	1,061,911	809,006
2018 Regional WCA Market	1,049	1,143,977	529,769

- 1.14 As set out in detail at Section 9 of the 2018 Decision, ComReg concluded that there was insufficient evidence of any SP having SMP on the 2018 Urban WCA Market. Accordingly, the 2018 Urban WCA Market was deregulated, and no obligations are currently in force at the 154 EAs constituting the 2018 Urban WCA Market. In contrast, ComReg concluded on the basis of the evidence available to it that Eircom held SMP on the 2018 Regional WCA Market, and accordingly imposed the full suite of regulatory obligations on Eircom at the 1,049 EAs constituting the 2018 Regional WCA Market.⁸
- 1.15 For the avoidance of confusion, in this MTA Decision:
- (a) The terms '**2018 Regional WCA Market**' and '**2018 Urban WCA Market**' (collectively, the '**2018 Relevant WCA Markets**') refer to those markets defined in the 2018 Decision;
 - (b) The terms '**Proposed Revised Regional WCA Market**' and '**Proposed Revised Urban WCA Market**' (collectively, the '**Proposed Revised Relevant WCA Markets**') refer to those markets defined on a preliminary basis in the Consultation;
 - (c) The terms '**Revised Regional WCA Market**' and '**Revised Urban WCA Market**' (collectively, the '**Revised Relevant WCA Markets**')⁹ refer to those markets defined in this MTA Decision;
 - (d) The term '**Candidate EAs**' refers to the 82 EAs which formed part of the 2018 Regional WCA Market, but which ComReg proposed in the Consultation to assign to the Proposed Revised Urban WCA Market; and
 - (e) The term '**Reassigned EAs**' refers to the 81 EAs which formed part of the 2018 Regional WCA Market, but which ComReg assigns to the Revised Urban WCA Market by means of this MTA Decision.

Competition Assessment

- 1.16 In the 2018 Decision, ComReg found that the 2018 Urban WCA Market EAs which met all relevant geographic assessment criteria were characterised by effective competition. In particular, ComReg concluded that,
- (a) Eircom faced direct and indirect constraints from existing competition arising, in particular, from BT, Virgin Media and Vodafone;
 - (b) Absent regulation, and given its network expansion plans, potential competition from SIRO would likely further constrain Eircom; but that

⁸ See Section 12 of the 2018 Decision.

⁹ In this Decision, ComReg refers to the Revised Relevant WCA Markets to distinguish between the markets set out in the 2018 Decision, and the redefined markets set out herein. The Decision Instrument at Annex: 1 retains the terminology applied in the 2018 Decision, but amends that terminology to refer to the proposed updated markets.

- (c) Countervailing Buyer Power (**'CBP'**) would not, on its own, act as an effective competitive constraint on Eircom, given the relative size of WCA purchases from Access Seekers, compared to Eircom's own purchases, and the absence of evidence of purchaser bargaining power in negotiations.
- 1.17 On the basis of the evidence available to it, ComReg has concluded that the Reassigned EAs display sufficiently similar characteristics of competition as the 2018 Urban WCA Market detailed in the 2018 Decision. ComReg accordingly removes the Reassigned EAs from the 2018 Regional WCA Market and assigns them to the Revised Urban WCA Market. Based on the competition analysis set out at Section 4 below, it follows that the Reassigned EAs now forming part of the Revised Urban WCA Market shall no longer be subject to SMP regulation.

Proposed Removal of Obligations

- 1.18 As set out at Section 13 of the 2018 Decision, in order to allow for an orderly transition to deregulation, ComReg will apply a six month sunset period for the withdrawal of existing regulation at the Reassigned EAs. During the sunset period, access to existing WCA services will be maintained at prevailing prices, and Eircom is not obliged to meet new requests for WCA inputs on a regulated basis. It may, however, at its discretion, meet any such new requests on a commercial basis. At the end of the sunset period, these obligations will no longer apply. The sunset period is discussed in greater detail at Section 5 below.
- 1.19 In arriving at the above conclusions, ComReg has, in accordance with its relevant statutory obligations:
- (a) consulted with the Competition and Consumer Protection Commission (**'CCPC'**). The CCPC indicated that it had no reason to disagree with ComReg's findings;¹⁰ and
 - (b) notified the European Commission (**'EC'**), BEREC,¹¹ and other National Regulatory Authorities (**'NRAs'**) regarding the measures which it proposes to take (the **'Notified Draft Measures'**).¹² On XX XX 2021 the EC issued its response to ComReg (the **'EC Response'**), in which it [To Be Completed], as further set out in Annex: 5 below.
- 1.20 In arriving at the positions set out in this Decision, ComReg has taken utmost account of the EC's Response. ComReg's consideration of the EC's Response is set out in Annex: 6 and elsewhere throughout this Decision, as appropriate.

¹⁰ A copy of the CCPC's correspondence (**'CCPC Response'**) is set out at Annex: 4 of this Decision.

¹¹ Body of European Regulators for Electronic Communications (**'BEREC'**) as established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications and the Office.

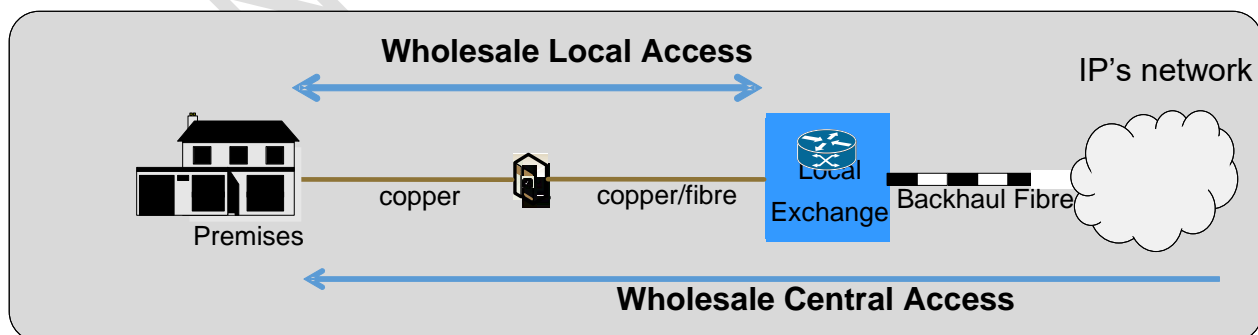
¹² A non-confidential version of the Notified Draft Measures is available online at <https://www.comreg.ie/publications/>.

2 Introduction

Overview

- 2.1 The Commission for Communications Regulation ('**ComReg**') is the National Regulatory Authority ('**NRA**') responsible for the regulation of the electronic communications sector (telecommunications, radio communications and broadcasting transmission) and the postal sector in the State.
- 2.2 Wholesale Central Access ('**WCA**') is a wholesale input used both directly and indirectly in the supply of a range of downstream wholesale and retail services, including (but not limited to) fixed telephony, broadband internet connectivity, and television ('**TV**') services, to residential and business consumers ('**End Users**'). Service Providers ('**SP(s)**') purchase WCA inputs such as Bitstream products to provide retail services to End Users (or, indeed, wholesale services to other SPs).
- 2.3 The WCA market sits between the retail broadband market (and other retail markets),¹³ where End Users buy broadband access, and the Wholesale Local Access ('**WLA**') Market (which concerns the access path between the End User and the SP network). WCA encompasses the rental of a broadband connection between an End User's premises and an aggregation point in a network, and therefore includes backhaul connectivity across the WCA SP's network.
- 2.4 Figure 2 below describes graphically the WLA and WCA markets and how they are related. The WLA market comprises a connection which is typically located between the local exchange (or equivalent aggregation node) and the End User's premise. In buying WLA, an SP must arrange for provision of the backhaul elements between its network and the local exchange (or equivalent aggregation node). The WCA market relates to the provision of the full connection from a network to the End User's premises, including the backhaul element. A number of other features also distinguish WLA and WCA services.

Figure 2: Example of Typical WLA and WCA Provision



¹³ For example, products sold in the WCA market can be used to provide Multicast TV services and Managed VoIP, as well as Bitstream services.

- 2.5 On 19 November 2018 ComReg published its WLA/WCA Decision (the '**2018 Decision**'),¹⁴ in which it set out its final position regarding its analysis of the WLA and WCA markets. This followed the publication of a consultation in November 2016 (the '**2016 Consultation**').¹⁵
- 2.6 On the same day, ComReg issued two pricing decisions (the '**2018 Pricing Decision**' and the '**2018 Bundles Decision**')¹⁶ which further specified the price control obligations that ComReg had imposed in the 2018 Decision. These also followed the publication of separate pricing consultations in 2017.¹⁷
- 2.7 This Decision sets out the results of ComReg's Mid-term Assessment ('**MTA**') which indicate that conditions of competition have appreciably altered since the publication of the 2018 Decision at certain identified EAs currently constituting the 2018 Regional WCA Market, such that they are more akin to the 2018 Urban WCA Market. ComReg accordingly concludes that it is appropriate to alter the relevant geographic market definition, and, based on a competition assessment, also to alter the findings of SMP, and any obligations currently in force at those EAs. In this regard, and in accordance with the 2018 Decision, ComReg reapplies the geographic assessment set out at Section 9 of the 2018 Decision to determine whether or not any EAs in the 2018 Regional WCA Market exhibit conditions of competition more consistent with conditions of competition arising in the 2018 Urban WCA Market.

¹⁴ Market Review: Wholesale Local Access (WLA) provided at a Fixed Location, Wholesale Central Access (WCA) provided at a Fixed Location for Mass Market Products - Response to Consultation and Decision. ComReg 18/94, D10/18.

¹⁵ Market Reviews: Wholesale Local Access (WLA) provided at a Fixed Location, Wholesale Central Access (WCA) provided at a Fixed Location for Mass Market Products - Consultation and Draft Decision. ComReg 16/96 (the '**2016 Consultation**').

¹⁶ Pricing of wholesale broadband services: Wholesale Local Access (WLA) market and the Wholesale Central Access (WCA) markets - Response to Consultation Document 17/26 and Final Decision. ComReg 18/95, D11/18 (the '**2018 Bundles Decision**')

and

Response to Consultation and Decision on price control obligations relating to retail bundles: Further specification of the wholesale price control obligation not to cause a margin squeeze in the WLA, and WCA Markets - Response to Consultation and Decision. ComReg 18/96, D12/18 (the '**2018 Pricing Decision**').

¹⁷ ComReg Document No. 17/26 "Pricing of wholesale services in the Wholesale Local Access (WLA) Market and in the Wholesale Central Access (WCA) Markets: further specification of price control obligations in Market 3a (WLA) and Market 3b (WCA)", dated 7 April 2017 (the '**2017 Pricing Consultation**').

and

Consultation on Price control obligations relating to Bundles: Further specification of the price control obligation not to cause a margin squeeze: FACO and WLA (Market 3a) and WCA (Market 3b), dated 9 June 2017 (the '**2017 Bundles Consultation**').

Consultation Process

- 2.8 ComReg conducted a public consultation in accordance with Regulation 12 of the Framework Regulations, issuing the Consultation on 23 November 2020. Five industry stakeholders (together, the '**Respondent(s)**') made submissions ('**Submissions**') to the Consultation, namely:
- (a) Vodafone;
 - (b) Sky Ireland;
 - (c) BT Ireland;
 - (d) ALTO; and
 - (e) Eircom.
- 2.9 Throughout this Decision, ComReg has summarised the Respondents' main views and has carefully considered them before setting out its final position.

Structure of the Decision

- 2.10 The remainder of this Decision is structured as follows:
- (a) Section 3 examines whether the geographic markets defined in the 2018 Decision should be redefined;
 - (b) Section 4 assesses competition within the Reassigned EAs which ComReg proposes to transfer from the 2018 Regional WCA Market to the Revised Urban WCA Market, and considers whether the competition assessment conclusions in respect of the 2018 Urban WCA Market similarly apply to the Reassigned EAs;
 - (c) Section 5 sets out the proposed removal of regulatory obligations at the Reassigned EAs, with such withdrawal subject to a six month sunset period, as set out in the 2018 Decision;
 - (d) Section 6 briefly sets out the Regulatory Impact Assessment ('**RIA**') of the proposed approaches to further deregulation of the Reassigned EAs;
 - (e) Section 7 sets out the next steps;
 - (f) Annex: 1 sets out the Decision Instrument;
 - (g) Annex: 2 presents the details behind the WCA geographic market assessment which is discussed in Section 3;
 - (h) Annex: 3 describes the geographic boundaries of the Revised Relevant WCA Markets;
 - (i) Annex: 4 contains the formal Competition and Consumer Protection Commission ('**CCPC**') response to ComReg's draft Decision;

- (j) Annex: 5 contains the formal European Commission ('EC') response to ComReg's draft Decision; and
- (k) Annex: 6 sets out ComReg's consideration of views of the EC set out in Annex: 5.

Legal Basis and Regulatory Framework

- 2.11 This MTA is undertaken by ComReg following the market analysis conducted in 2018 in accordance with the obligation set out in the **Framework Regulations**¹⁸ that National Regulatory Authorities ('NRAs') should analyse relevant markets taking utmost account of the European Commission's 2014 Recommendation,¹⁹ which was replaced by the **2020 Recommendation**²⁰ during the lifetime of the MTA, and the **SMP Guidelines**,²¹ and which led to the 2018 Decision.
- 2.12 Regulation 26 of the Framework Regulations requires that ComReg, taking the utmost account of the 2014 Recommendation or the replacement 2020 Recommendation, as appropriate, and of the SMP Guidelines, define relevant markets appropriate to national circumstances, in accordance with the principles of competition law.
- 2.13 The views set out in this Decision rely on the assessment carried out in the 2018 Decision, which adopted the approaches recommended by the European Commission ('EC'). In doing so, the 2018 Decision took the utmost account of:
- (a) The **2014 Recommendation** and the **Explanatory Note to the 2014 Recommendation**²² on relevant product and service markets susceptible to *ex ante* regulation within the electronic communications sector;
 - (b) The **SMP Guidelines** on market analysis and the assessment of SMP; and

¹⁸ European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011) (the '**Framework Regulations**'). The Framework Regulations transposed the Framework Directive 2002/21/EC as amended by Directive 2009/140/EC.

¹⁹ European Commission Recommendation of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation (the '**2014 Recommendation**').

²⁰ European Commission Recommendation of 18 December 2020 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the '**2020 Recommendation**').

²¹ European Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic networks and services, OJ 2002 C 165/3 (the '**SMP Guidelines**').

²² Explanatory Note accompanying the Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation, dated 9.10.2014 (the '**Explanatory Note to the 2014 Recommendation**'). The Explanatory Note to the 2014 Recommendation is available at <https://ec.europa.eu/digital-single-market/en/news/explanatory-note-accompanying-commission-recommendation-relevant-product-and-service-markets>.

- (c) other recommendations which were also taken into account insofar as they were relevant to the assessment, as set out at paragraph 2.33 of the 2018 Decision.
- 2.14 ComReg also takes account of:
- (a) The EC's **Notice on Market Definition** for the purposes of community competition law;²³
 - (b) Any relevant common positions adopted by the Body of European Regulators for Electronic Communications ('**BEREC**');
 - (c) Where appropriate, the European Electronic Communications Code ('**EECC**');²⁴ and
 - (d) ComReg has also had regard to relevant EC comments made pursuant to Article 7 of the **Framework Directive**²⁵ with respect to other EU NRAs' market analyses.
- 2.15 The EECC entered into force on 20 December 2018 and replaced the existing EU Common Regulatory Framework which was adopted in 2002 and amended in 2009. With some limited exceptions, Member States are required to transpose the EECC into national law by 21 December 2020.
- 2.16 As the EECC has not yet been transposed into Irish law as of October 2021, the legal basis for this MTA is the current statutory regime. Whilst the publication of this Decision occurs prior to the transposition of the EECC into Irish law, ComReg is mindful of the EECC in setting out its findings in this Decision. ComReg notes that the current market review process (including the procedure for the identification and definition of markets and market analysis procedure) is broadly consistent with that proposed under the EECC, although there are some differences.
- 2.17 In the event that there are any other areas where the EECC either materially deviates from the current framework or otherwise requires special emphasis for the purpose of the market analysis, ComReg will identify such specific instances and give due consideration to these as they arise in this MTA Decision.
- 2.18 The 2014 Recommendation describes the WCA market in the following terms:

²³ Commission notice on the definition of relevant market for the purposes of Community competition law, Official Journal C 372, 09/12/1997 pp.5-13 ('**Notice on Market Definition**').

²⁴ DIRECTIVE (EU) 2018/1972 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2018 establishing the European Electronic Communications Code <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972&from=EN>.

²⁵ Article 16 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, as amended by Directive 2009/140/EC (the '**Framework Directive**').

“Wholesale central access provided at a fixed location for mass-market products (‘Market 3B’)”²⁶

- 2.19 ComReg notes that, in the intervening period between the publication of the Consultation and this MTA Decision, in December 2020 the 2014 Recommendation was replaced by the 2020 Recommendation, which removed WCA from the list of markets which the EC considers are susceptible to *ex ante* regulation. Accordingly, WCA market reviews commenced by NRAs following the entry into force of the updated recommendation on relevant markets will need to carry out a Three Criteria Test (‘3CT’) in the light of national market circumstances.²⁷
- 2.20 For the avoidance of doubt, ComReg considers that this MTA is an interim update, rather than a full new market review (as set out at paragraphs 9.257 to 9.259 of the 2018 Decision). Accordingly, ComReg considers that the MTA is governed by the 2014 Recommendation, and that it is accordingly not necessary to carry out a 3CT for the purposes of the MTA. Nevertheless, for the sake of completeness, ComReg carries out a 3CT at Section 4 below.
- 2.21 Section 12(1)(a) of the Communications Regulation Act 2002 (as amended) sets out ComReg’s objectives in exercising its functions in relation to the provision of electronic communications networks, electronic communications services and associated facilities, namely to:
- (a) Promote competition;
 - (b) Contribute to the development of the internal market; and
 - (c) Promote the interests of users within the European Union.
- 2.22 Apart from conducting a public consultation in accordance with Regulation 12 of the Framework Regulations, ComReg is also obliged to make its draft measures accessible to the EC, BEREC and NRAs in other Member States, pursuant to Regulation 13(3) of the Framework Regulations.

Information Sources Relied Upon

- 2.23 In drafting this Decision, ComReg has obtained and draws upon the following information sources:
- (a) Respondents’ Submissions to the Consultation;

²⁶ Annex to the 2014 Recommendation.

²⁷ As noted in Section 5 of the Explanatory Note accompanying the 2020 Recommendation, “The circumstance may arise that an NRA is in the process of conducting a market review, including a public consultation in accordance with Article 32 of the Code, at the time when the updated Recommendation is adopted. If the NRA is considering the regulation of a market which would no longer be included in the updated Recommendation, then that NRA should apply the three criteria test in order to assess whether based on national circumstances that market would still be susceptible to *ex ante* regulation. Therefore, the notified draft decision should outline and justify why the three criteria are satisfied”.

- (b) Information provided by SPs in response to non-statutory information requests;
- (c) The experience of NRAs in regulating relevant WCA markets in other jurisdictions;
- (d) Relevant guidance from the EC, BEREC and other commentators;
- (e) Information set out in the 2018 Decision;
- (f) Information provided to ComReg by Service Providers for the purpose of ComReg's Quarterly Key Data Reports ('**QKDR(s)**'); and
- (g) Other information in the public domain.

Liaison with other Bodies

2.24 In accordance with Regulation 27(1) of the Framework Regulations, ComReg has consulted with the Competition and Consumer Protection Commission ('**CCPC**') on the market definition exercise and competition assessment set out in this Decision. The CCPC indicated in its response that it had no compelling grounds to disagree with ComReg's findings. A copy of correspondence from the CCPC (the '**CCPC Response**') is set out at Annex: 4 below.

2.25 On 20 October 2021 ComReg also made its Notified Draft Measures accessible to the EC, BEREC and NRAs in other Member States, pursuant to Article 32(3) of the EECC and Regulation 13(3) of the Framework Regulations. The EC provided its response to ComReg ('**EC Response**') on xx xx 2021, a copy of which is set out in Annex: 5. As is required, ComReg has taken utmost account of the EC Response throughout this Decision, including as referred to in Annex: 6 of this Decision.

2.26 This is a non-confidential version of the Decision. Certain information within the Decision has been redacted for reasons of confidentiality, with such redactions indicated by the symbol X . Should an individual SP wish to review its own redacted information, it should make a request for such in writing to ComReg and indicate, where possible, the specific paragraph numbers within which the redacted information being requested is contained. ComReg will consider requests for redacted information and will, subject to the protection of confidential information, respond accordingly.

3 Assessment of the Relevant WCA Markets

Overview

- 3.1 In Section 9 of the 2018 Decision, ComReg set out its position on the appropriate 2018 Relevant WCA Market definitions. ComReg has now reassessed the geographic scope of the 2018 Relevant WCA Markets, in line with the approach to the MTA set out in Section 9 of the 2018 Decision (and elsewhere). ComReg then sets out its views below with reference, in particular, to the geographic scope of the 2018 Regional WCA Market and the 2018 Urban WCA Market.
- 3.2 ALTO, BT, Eircom, Sky and Vodafone submitted comments in response to Question 1²⁸ in Section 3 of the Consultation. ComReg has considered all Respondents' Submissions in relation to Section 3 of the Consultation and sets out its final position below. However, of the comments received, those which are more appropriately addressed in, or which specifically refer to, sections other than Section 3 of the Consultation, are outlined below at a high level, with further detail provided in the other appropriate sections of this Decision.

Relevant Product Market Assessment

- 3.3 The position taken by ComReg in the Consultation is set out below. The MTA proceeds on the basis of the relevant WCA product market defined in the 2018 Decision. The WCA Product Market comprises of:
- (a) WCA-based Bitstream products provided over copper and FTTx networks, including wholesale Bitstream products provided using upstream WLA inputs;
 - (b) Self-supply of WCA-based Bitstream by Eircom and BT;
 - (c) WCA-based Bitstream products that may hypothetically be offered by SIRO;
 - (d) Self-supply of CATV retail broadband products offered by Virgin Media in areas where its network is present; and
 - (e) Self-supply of retail broadband products offered by SPs using WLA upstream inputs and having widespread coverage (such as Vodafone).

²⁸ Question 1: Do you agree with ComReg's preliminary views on the re-definition of the geographic scope of the Revised Relevant WCA Markets? In particular, do you agree that 82 Candidate EAs should be transferred from the 2018 Regional WCA Market? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

- 3.4 The 2018 Decision excluded Bitstream-based WCA products hypothetically provided over localised alternative FTTH networks from the WCA Product Market as no WCA products were supplied over these networks which could likely serve as an effective substitute for WCA offered by a Hypothetical Monopolist ('HM').

Relevant Geographic Market Assessment

- 3.5 The EC Notice on Market Definition states that the relevant geographic market relates to an area in which undertakings are involved in the supply and demand of the relevant products or services, and in which the conditions of competition are similar, or sufficiently homogeneous.
- 3.6 In the 2018 Decision, ComReg carried out a two-step assessment to define the WCA geographic markets:²⁹
- (a) An assessment of the geographic scope of the WCA market(s) based on five indicators ('**Step 1**'); and
 - (b) A framework for defining the geographic boundaries of those markets, based on five criteria for assessing competitive conditions ('**Step 2**').
- 3.7 Much of the Step 1 and Step 2 analysis overlaps and is interdependent. Step 1 justifies the appropriateness of defining either separate geographic markets, or a single geographic market. That done, Step 2 determines which market each EA should fall into, on the basis of quantifiable criteria (the '**criteria**'). Therefore, it is necessary to carry out Step 1 to determine whether Step 2 is warranted. If Step 1 indicates that a single geographic market remains appropriate, then Step 2 is unnecessary.
- 3.8 **Step 1** assesses five geographic assessment indicators (the '**indicators**') which are of general application, and which ComReg similarly applies in its assessments of other markets. These indicators - listed at paragraph 9.13 of the 2018 Decision - are based on the principles set out in the Notice on Market Definition and the BEREC Common Position on Geographic Aspects of Market Analysis:
- (a) Geographic differences in entry conditions over time;
 - (b) Variation in the number and size of potential competitors;
 - (c) Distribution of market shares;
 - (d) Evidence of differentiated pricing strategies or marketing; and
 - (e) Geographical differences in demand characteristics.
- 3.9 **Step 2** is a bespoke assessment tailored to the characteristics of the 2018 Relevant WCA Markets. Having regard to the Step 1 assessment, Step 2 re-applies the 2018 Decision criteria set out at Table 3 below to determine how, on a quantitative basis, to assign EAs to one of the separate geographic markets identified at Step 1.

²⁹ As described at paragraphs 9.13 to 9.15, as well as paragraph A5.31 and A5.56 of the 2018 Decision.

Table 3: Step 2 Criteria for Assessing Competitive Conditions at Exchange Areas

Absent regulation in the WCA Market:	
	Criterion 1: An Exchange Area in which at least three Primary Operators would be capable, within a sufficiently short period, of providing WCA, WLA, or broadband services at the retail level to End Users; AND
	Criterion 2: An Exchange Area in which Eircom would provide broadband services at the retail level to less than 50% of End Users; AND
	Criterion 3: An Exchange Area where any Primary Operator(s) using third-party WLA inputs, if present, collectively provide(s) ³⁰ retail broadband services to at least 10% of End Users; AND
	Criterion 4A: An Exchange Area in which an Alternative Network Operator, if present provides, ³¹ or could provide, within a sufficiently short period, retail broadband services to End Users to at least 30% of the premises in that particular Exchange Area; AND
	Criterion 4B: An Exchange Area in which any Alternative Network Operator(s), if present, collectively provide(s) ³² retail broadband services to at least 10% of End Users; AND
	Criterion 5: Exceptionally, on a case-by-case basis, where an Exchange Area:
(i)	fails no more than one of Criteria (2) to (4B) above, and fails the Criterion by a small margin (i.e. less than 10% of the percentage specified); ³³ OR
(ii)	fails no more than one of Criteria (2) to (4B) above, and where an Alternative Network Operator provides broadband services, either at the wholesale level or at the retail level, which equates to at least 60% of End Users, that Exchange Area will be deemed to have satisfied the relevant Criterion.

³⁰ 'Collectively provides' means the provision of retail broadband services by one or more Primary Operators using WLA inputs, directly to End Users and/or indirectly to End Users via a WLA-based WCA service that is sold to other retail SPs. The 10% market share figure is satisfied by a single PO using WLA inputs, or by the sum of the market shares of all POs using WLA inputs.

³¹ 'Provides' means the provision of retail broadband services directly to End Users and/or indirectly to End Users via a WLA-based WCA service that is sold to other retail SPs. Thus, the 30% coverage figure is satisfied by a single ANO, even if two ANOs are present, but is not satisfied by the two ANOs having coverage which sums to at least 30%, where each individual ANO's coverage is less than 30%.

³² In this instance, 'collectively provides' means the provision of retail broadband services by one or more ANOs, directly to End Users and/or indirectly to End Users via WCA service that is sold to other retail SPs. Thus, the 10% market share figure may be satisfied by a single ANO, or by the sum of the market shares of all ANOs.

³³ For example, the requirement for Eircom's market share to be less than 50% (Criterion 2) could be amended to 55% under Criterion 5 (i.e. 110% of the requirement set out in Criterion 2).

- 3.10 Where Step 1 concludes that it is appropriate to define separate geographic markets, Step 2 applies the geographic criteria which should be used to assess whether the conditions of competition in EAs are appreciably different, such that they can be distinguished from neighbouring EAs, and therefore form separate geographic markets. Step 2 therefore groups together EAs, depending on whether or not they meet all five geographic assessment criteria.
- 3.11 In this MTA Decision, and in accordance with the 2018 Decision, ComReg re-applies Step 1 and Step 2 to the 1,049 EAs which form the 2018 Regional WCA Market. At the time of the 2018 Decision, these EAs failed one or more of the Step 2 criteria. Accordingly, ComReg assigned these EAs to the 2018 Regional WCA Market, on the basis that conditions of competition at those EAs were sufficiently similar, and also were sufficiently different to conditions of competition on those EAs constituting the 2018 Urban WCA Market.

Respondents' Views

- 3.12 Vodafone suggested that the proposal to deregulate the Candidate EAs – on top of the 154 EAs in the 2018 Urban WCA Market which have already been deregulated - came at very short notice.
- 3.13 In Sky's view, the geographic assessment is no longer fit for purpose. Sky noted that, in its response to the 2016 Consultation, it had broadly agreed with ComReg's preliminary conclusions and geographic assessments at the time, subject to the following caveat:
- "it is imperative that ComReg keep the issue of qualifying criteria for exchanges falling in or out of the Urban WCA market under review. This did not happen in the context of what was previously defined as Large Exchange Areas and this afforded Eircom flexibility on pricing ComReg had not intended when that criteria was initially devised."* [emphasis added].³⁴
- 3.14 Sky issued this caveat based on its view that ComReg's failure to keep criteria for assessing Large Exchange Areas ('LEA(s)') under review following the publication of the 2013 NGA Remedies Decision³⁵ had resulted in lighter touch regulation being imposed in areas where Eircom faced no platform competition.

³⁴ Sky Submission, at paragraph 2.

³⁵ Next Generation Access ('NGA'): Remedies for Next Generation Access Markets. Response to Consultation and Final Decision (ComReg Document 13/11, Decision D03/13) (the '2013 NGA Decision').

- 3.15 In response to the points raised by Sky in its response to the 2016 Consultation, ComReg noted in the 2018 Decision that *“it will be important to keep the issue of qualifying criteria for Exchange Areas falling in or out of the Urban WCA Market under review”* while acknowledging the importance of the need to provide stability and regulatory certainty.³⁶ Sky argued that providing regulatory certainty should never be used as a basis for sticking with a plan where demonstrable failings are observed as an output, and it expected ComReg to concur on that point.
- 3.16 Sky concluded, based on increases in FTTC Bitstream pricing in the 2018 Urban WCA Market, that the geographic assessment criteria failed to correctly identify competitive conditions at a large number of the 154 EAs constituting the 2018 Urban WCA Market. Sky accordingly asserted that the MTA should focus on which EAs should be moved from the 2018 Urban WCA Market back into the Regional WCA Market, as, in Sky’s view, too many EAs were included in the 2018 Urban WCA Market, and should now be subject to regulation.
- 3.17 Eircom considered that ComReg’s proposals do not accurately reflect the level of competition present in various parts of the State.
- 3.18 Eircom suggested that ComReg is relying on a mechanistic re-application of outdated, overly conservative and complex geographic criteria to attempt to reflect the *“dynamic”* nature of the market and account for market developments since 2018. Eircom considered that the criteria used at the time of the 2018 Decision no longer remain suitable for a fully accurate assessment of competition in 2021 and may fail to capture currently or prospectively competitive EAs.
- 3.19 The inflexibility of the geographic criteria is, in Eircom’s view, demonstrative of the need to review the WLA and WCA markets in their entirety, rather than relying on a mechanistic re-application of those same criteria mid-way through the market review period. In support of this position, Eircom argued that, at the time of the 2018 Decision, FTTH rollout was at a nascent stage, particularly in rural areas, and the NBP had not yet been awarded. Eircom considered that such a review should run in parallel with a review of the Physical Infrastructure Access (**PIA**) market, given the related nature of the markets and the fact that PIA remedies currently sit in the WLA market.
- 3.20 Eircom argued that ComReg’s analysis is insufficiently forward-looking, and can only lead to a delay in fibre adoption, impacting fibre investment incentives and eventual copper switch off. This will in turn, according to Eircom, delay the European Commission’s digital and green transitions, which have been elevated to core policy objectives at national and EU level in the wake of the COVID-19 crisis.

³⁶ 2018 Decision, at paragraph 9.64.

- 3.21 In Eircom’s view, the award of the NBP contract and the commencement of NBI rollout constitute material and major developments in the relevant markets, which, in conjunction with the future direction of travel for regulatory policy, warrant commencing a market review now, in advance of the five year review timeline.
- 3.22 Eircom noted that Article 68(6) EECC requires NRAs to “*consider the impact of new market developments, such as in relation to commercial agreements, including co-investment agreements, influencing competitive dynamics.*” Eircom considers that the award of the NBP contract and the commencement of NBI route rollout constitute new market developments in the relevant markets that will influence competitive dynamics.
- 3.23 In terms of network coverage and differing competitive conditions on a sub-national basis, Eircom suggested that a primary driver of such differences is premises density. ComReg itself noted at paragraph 4.39 of the Consultation that “[a] number of SPs have made network investments at the Candidate EAs to take advantage of the higher premises density (3,208 premises per EA, on average) of potential customers, compared to the Revised Regional WCA Market (935 premises per EA, on average).”
- 3.24 Eircom identified 22 EAs in the Proposed Revised Regional WCA Market that, in its view, have above-average premises density, compared to ComReg’s findings, set out at paragraph 3.23 above. These EAs are set out at Table 4 below:

Table 4: Number of premises in selected EAs, Q1 2021 [X REDACTED X]

EA	Name	Address count	SIRO rollout
[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	

Table 6: Pricing for NG Bitstream Plus Products in the Relevant WCA Markets, 1 July 2021 - 30 June 2022 (Port Prices)

	WCA Market		Difference	
	Regional	Urban	€	%
Standalone FTTC	€25.27	€28.84	€3.57	14%
Standalone FTTH 150 MB	€29.72	€29.72	0	0%
Standalone FTTH 300 MB	€29.72	€29.72	0	0%
Standalone FTTH 500 MB	€29.72	€29.72	0	0%
Standalone FTTH 1000 MB	€34.72	€34.72	0	0%
POTS-based FTTC⁴⁰	€11.71	€14.16	€2.45	21%
POTS-based FTTH 150MB	€15.31	€15.31	0	0%
POTS-based FTTH 300MB	€15.31	€15.31	0	0%
POTS-based FTTH 500MB	€15.31	€15.31	0	0%
POTS-based FTTH 1000MB	€20.31	€20.31	0	0%

- 3.33 On the basis of the above, ComReg also concludes that there are no grounds, as Sky suggests, to move EAs from the (deregulated) Urban WCA Market to the (regulated) Regional WCA Market, since the ‘price increases’ which Sky alludes to are not, in ComReg’s view, indicative of a lack of competition on the part of Eircom, arising from its SMP position on the Urban WCA Market. In this regard, ComReg notes the widespread availability and take-up of WLA in the Urban WCA Market (which is accounted for by Step 2 Criterion 3). This is made available to Access Seekers on a regulated basis, including on the basis of price controls, as set out in the 2018 Decision. This provides Access Seekers with the ability to compete in the provision of WCA or downstream retail service provision, on the basis of regulated WLA inputs. ComReg further concludes that, on a forward-looking basis, Sky’s reasoning does not provide evidence that ComReg’s application of the geographic assessment criteria gives rise to the assumption that the Reassigned EAs should not be deregulated. ComReg carries out its competition assessment of the Reassigned EAs at Section 4 below.
- 3.34 In contrast, Eircom argues that the geographic assessment criteria are overly conservative and complex, and notes that a number of EAs in the Proposed Revised Regional WCA Market were, firstly, characterised by above-average premises density, and secondly, were assigned to the Urban FACO Markets.

⁴⁰ The POTS-based tariffs listed are based on the premise that the customer is already contributing to the cost of WLR, which is currently €16.59 per month.

- 3.35 Eircom's comments regarding premises density, as set out at paragraphs 3.23 to 3.25 above, argue that differing competitive conditions across EAs are driven primarily by premises density. While premises density may influence the likelihood of network rollout (when considered alongside other factors such as the level of investment required, return customer take-up and so on), premises density itself is not an indicator which ComReg measures directly as part of its geographic assessment. Rather, premises density is reflected indirectly in other Step 1 and Step 2 assessment criteria. Furthermore, the premises density figures alluded to by Eircom are used by ComReg in the Consultation to illustrate the fact that economies of scale, scope or density did not appear in a number of cases to act as barriers to entry and expansion when assessing potential competition. Accordingly, these data were used in the Consultation as part of the competition assessment, and not, as Eircom appears to be trying to suggest, as part of the geographic market definition exercise. For these reasons, ComReg notes that the data presented by Eircom at Table 4 above do not, in ComReg's view, have any significant explanatory value, other than to highlight potential servable areas.
- 3.36 In respect of the sample EAs set out at Table 5 above, Eircom suggests that this affords evidence that the geographic criteria are too conservative, given that the sample EAs fall into the proposed Urban FACO Markets. ComReg considers that this reasoning is misleading. As Eircom itself notes, the data it provides are a small sample. ComReg also notes that Eircom has indicated that its NGA coverage at these EAs is less than 50%. However, the Relevant WCA Product Market, as set out at paragraph 9.347 in the 2018 Decision, includes bitstream delivered over both CGA and NGA networks. Accordingly, Eircom's Table 5 only partially reports its WCA coverage at those EAs, since it does not report CGA coverage capable of delivering bitstream. ComReg data indicate that 58% of the Reassigned EAs also fall into the Urban FACO Market. Accordingly, although Eircom has posited a large disjuncture between the proposed Urban FACO Market and the Reassigned EAs which ComReg allocates to the Revised Urban WCA Market, the evidence makes clear that this is not, in fact, the case. Despite the application of different geographic assessment criteria on the proposed Relevant FACO Markets and the Revised Relevant WCA Markets, there is, in fact, a strong overlap between the Reassigned EAs and proposed Urban FACO Market EAs.
- 3.37 ComReg notes that its competition assessment is set out in detail at Section 4 below, where the impact of NBI, Eircom's FTTH rollout and the continued rollout of Virgin Media and SIRO on the Revised Regional WCA Market are addressed.

- 3.38 In respect of the digital and green transitions, Eircom has not specifically referenced these policies, but ComReg assumes that Eircom is alluding to two of the European Commission's six priorities for 2019-2024, "*A European Green Deal*",⁴¹ and "*A Europe fit for the digital age*".⁴² The European Green Deal Action Plan does not appear to list any action directly related to the adoption of fibre networks,⁴³ although the digital connectivity toolbox includes best practices to boost timely deployment of fibre networks.⁴⁴ ComReg notes, however, that it is obliged to carry out its assessment on the basis of conditions on a duly-defined relevant market, and cannot define or analyse markets with the objective of meeting other public policy objectives, regardless of how laudable those objectives are. Thus, ComReg cannot – as Eircom suggests – designate NBI as a PO in order to meet these policy objectives.
- 3.39 ComReg notes that the scope of the MTA was clearly set out in the 2018 Decision (and reiterated in the Consultation). ComReg specifically noted in paragraph 1.65 of the 2018 Decision that the function of the MTA is to enable ComReg to capture the potential dynamic nature of the 2018 Regional WCA Market through the reapplication of the criteria used in the 2018 Decision. ComReg has conducted this WCA MTA in line with its original proposal. ComReg considers that it has given stakeholders sufficient notice of the MTA and refutes Vodafone's suggestion that the proposal to further deregulate the Revised Urban WCA Market was unexpected, or came at short notice.
- 3.40 Having set out its intention at the time of the 2018 Decision to re-apply the same criteria when carrying out the MTA, ComReg is not obliged, nor would it be appropriate, to change its approach at this time, given the implications it would have on reducing regulatory certainty for industry stakeholders. ComReg further notes that it is not undertaking a full market review at this time, as this is outside of the scope of the WCA MTA and is unwarranted until the next review date in 2023.

⁴¹ https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en

⁴² https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age_en

⁴³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1596443911913&uri=CELEX:52019DC0640#document2>

⁴⁴ <https://digital-strategy.ec.europa.eu/en/news/connectivity-toolbox-member-states-agree-best-practices-boost-timely-deployment-5g-and-fibre>

- 3.41 In respect of Eircom’s proposal that a fresh WLA/WCA market review should now be carried out alongside the PIA review, ComReg first notes from a practical perspective that this would have the effect of pushing further deregulation out one or two years, compared to current proposals to further deregulate upon publication of this Decision (subject to any sunset periods), as described at Section 4 below. Eircom’s reasoning appears to be that the Step 1 and Step 2 criteria are inflexible, as specifically instanced by the alleged failure to account for NBI. ComReg considers that it has appropriately accounted for its assessment of POs (and potential additional POs) on the Relevant WCA Markets, and therefore concludes that there are no *a priori* grounds to suggest that the MTA should be abandoned and replaced with a fresh WLA/WCA market review.
- 3.42 ComReg notes that, having outlined the criteria for geographic assessment in the 2018 Decision and set out its proposal to reapply the same criteria for the MTA, and having further considered Respondents’ Submissions, it is satisfied that it has carried out the geographic market assessment as appropriate.

Consideration of additional Primary Operators (‘POs’)

- 3.43 In re-assessing the geographic scope of the 2018 Relevant WCA Markets, and as set out at paragraph A10.33 of the 2018 Decision, ComReg only includes those SPs that have significant (direct or indirect) presence on the WCA market or the retail broadband market at a national or regional level, absent regulation in the WCA market. ComReg designates such SPs as ‘**Primary Operators**’ (‘**PO(s)**’). Prior to re-assessing the relevant geographic markets, ComReg must first determine whether there are grounds, based on current market circumstances, to designate additional POs. ComReg’s position in the Consultation is set out below.
- 3.44 ComReg’s position, set out at paragraph A10.34 in the 2018 Decision, is that the following SPs are POs:
- (a) Eircom, which provides the focal WCA product;
 - (b) BT, which offers a demand-side substitute;
 - (c) SIRO, which offers a supply-side substitute;
 - (d) Vodafone, which offers an indirect retail constraint; and
 - (e) Virgin Media, which also offers an indirect retail constraint.

- 3.45 Only those SPs having a reasonably-sized presence (denoted primarily by market share) are capable of potentially exerting an effective competitive constraint on other competitors.⁴⁵ Thus, ComReg applies the conditions described in the 2018 Decision (set out at Table 7 below) to determine whether any additional SPs should be designated as POs.⁴⁶
- 3.46 Each of the POs identified above manages or can access a network which, absent regulation in the WCA market, is capable (or which ComReg considers is prospectively capable within a reasonable timeframe, and without incurring significant sunk costs) of providing WCA and/or retail broadband (and other services) using its own network inputs, or inputs procured via the WLA market.
- 3.47 ComReg confirmed at paragraph 9.259 of the 2018 Decision that the MTA would consider whether it would be appropriate to designate additional POs:
- “On a forward-looking basis, and in view of the potential dynamic nature of the geographic aspects of the Relevant WCA Markets, in intending to conduct the Mid-term Assessment, ComReg reserves the right to designate further SPs as Primary Operators, in addition to the five Primary Operators identified in this Decision, should ComReg form the view that any SP meets the conditions for designation as a Primary Operator set out at paragraphs 10.154 and 10.155 of the Consultation, and at footnote 1617 above.”*
- 3.48 ComReg accordingly considers whether it is appropriate to designate further POs in addition to the five POs identified in the 2018 Decision. ComReg’s assessment has focussed, in particular, on whether Sky Ireland (**‘Sky’**) or National Broadband Ireland⁴⁷ (**‘NBI’**) should be so designated, having regard to the conditions in the 2018 Decision for such a designation, set out at Table 7 below:

Table 7: 2018 Decision conditions for designation as a Primary Operator

<p>Condition 1</p> <p>Can the SP manage or access a network, absent regulation in the WCA markets, which is capable (or prospectively capable within a reasonable timeframe and without incurring significant sunk costs) of providing WCA and/or retail broadband (and other) services using its own network inputs or inputs procured via the WLA market?</p>
<p>Condition 2</p>

⁴⁵ See footnote 1617 and paragraphs A10.33 to A10.35 of the 2018 Decision.

⁴⁶ Primary Operators are defined in the 2016 Consultation at paragraphs A5.59 to A5.64. Note that this is not intended as an SMP assessment, but, rather, an examination as to whether competitive conditions may differ across different geographic areas.

⁴⁷ See www.nbi.ie. In November 2019, NBI was awarded a contract by the Government under its National Broadband Plan (**‘NBP’**), to build, operate and maintain a high speed broadband network in those parts of the State that are not, nor are likely to be, commercially served with broadband.

Does the SP have a sizable national (or regional) presence, that is, a reasonably sized market share capable of potentially exerting an effective competitive constraint on other competitors?

- 3.49 ComReg applies these two conditions to determine whether, as part of the MTA, it is appropriate to designate additional POs. Consistent with the 2018 Decision, in order for an SP to be designated as a PO, it must meet both conditions cumulatively; if it meets one condition only, it cannot be so designated.
- 3.50 ComReg has considered, in particular, whether there are sufficient grounds to designate either or both of NBI or Sky as POs, and, for the reasons set out below, has concluded that neither NBI nor Sky meets both necessary conditions. Aside from NBI and Sky, ComReg has not identified any other SPs which could potentially meet both conditions for designation as a PO.

Sky Ireland ('Sky')

- 3.51 Sky may be designated as a PO where it meets Conditions 1 and 2 above. As set out at paragraphs 1.3 and 1.6 of the 2018 Decision, Access Seekers may use WLA inputs to provide various downstream wholesale and/or retail products, including WCA. POs may accordingly participate in the Relevant WCA Markets on the basis of their use of upstream WLA inputs, either in selling WCA to other SPs (BT), or for self-supply for their own sales of retail broadband to End Users (in the case of Vodafone, which purchases WLA from both Eircom and SIRO).
- 3.52 As of Q1 2021, Sky purchased [~~SKY: [REDACTED]~~]⁴⁸ WLA lines from SIRO. In doing so, Sky makes use of certain BT inputs. Sky's purchases of WLA amount to [~~SKY: [REDACTED]~~]⁴⁹ of total WLA VUA lines, and [~~SKY: [REDACTED]~~]⁵⁰ of total fixed retail broadband lines reported in the Q1 2021 QKDR. While Sky is capable of accessing SIRO's network, the limited footprint of this network, together with Sky market share figures, suggests that, absent regulation, Sky would be unable to access a network capable of generating an effective indirect competitive constraint, because it would be reliant on SIRO WLA alone.⁵¹ In particular, these figures suggest that, absent regulation, Sky would be unlikely to have a sufficiently sizable presence in the 2018 Regional WCA Market which would be capable of potentially exerting an effective (indirect retail) competitive constraint.

⁴⁸ Fewer than 10,000 lines.

⁴⁹ 5-10%.

⁵⁰ 0-5%.

⁵¹ As set out at paragraph A 2.22 below, to avoid double-counting of POs, SIRO VUA sales to BT are assigned to BT for assessment purposes.

3.53 Accordingly, ComReg considers that Sky fails Condition 1 for designation as a PO. Since an SP may only be designated as a PO where it meets both Condition 1 and Condition 2, it is not necessary to proceed to consider whether Sky would meet Condition 2. For these reasons, ComReg concludes that Sky should not be designated as a PO for the purpose of the MTA.

National Broadband Ireland ('NBI')

- 3.54 ComReg has also given consideration to whether it is appropriate to designate NBI as a PO. The NBP contract was signed between the Government and NBI in November 2019. Pursuant to the contract, over a seven-year rollout period, NBI is scheduled to pass by approximately 544,000 premises in the Intervention Area ('IA')⁵² spread across [redacted] EAs.⁵³ The IA focuses on areas where there is no existing or planned commercial NG network. This amounts to approximately 23% of all premises in the State. Although predominantly rural, the IA covers areas in all 26 counties, and all but four metropolitan Dublin constituencies. Accordingly, NBI will have a presence at (at least part of) [redacted] of EAs.⁵⁴
- 3.55 NBI is obliged to offer both WLA and WCA⁵⁵ products to Access Seekers in the IA. NBI is required to operate at the wholesale level only, and will not generally have a direct retail presence. Accordingly, to the extent that NBI is required to offer WCA on its FTTP network, it is likely to act as a demand-side substitute in the provision of WCA, where its network is present and has a sufficient degree of coverage.
- 3.56 As of July 2021, NBI has commenced the provision of WLA or WCA to SPs passing just under [redacted] premises located in EAs within the IA (in Cork, Galway, and Cavan).⁵⁷

⁵² <https://nbi.ie/rollout-plan/>.

⁵³ 1,100-1,200 EAs.

⁵⁴ 90-100% of EAs.

⁵⁵ See Section 4.2.1 of Schedule 2.2 of the NBP Contract, 'Reference Offer Requirements', available online at <https://s3-eu-west-1.amazonaws.com/govieassets/76783/3e26ff7b-c325-4af1-973b-8e0e0d4970a2.pdf>.

⁵⁶ 10,000-15,000 premises.

⁵⁷ <https://nbi.ie/news/latest/2020/10/12/7900-rural-homes-will-get-broadband-access-this-year/>

3.62 Accordingly, ComReg concludes that there are insufficient grounds to designate additional POs for the purpose of the MTA, and the assessment is to be carried out based on the five existing POs⁶² (Eircom, BT, Vodafone, SIRO, and Virgin Media). ComReg now moves to reapply the Step 1 and Step 2 assessments on the 1,049 EAs constituting the 2018 Regional WCA Market.

Respondents' views on designation of POs

3.63 Eircom asserted that ComReg's proposal not to designate Sky as a PO was fundamentally flawed. Eircom argued, firstly, that it is unclear why the fact that Sky is not active in the merchant market provision of WLA or WCA to other SPs was relevant to whether it should be designated as a PO. Eircom's understanding was that Condition 1 already captures SPs who are not active in merchant market provision on the basis that they can access (on a current or prospective basis) a wholesale network provider, absent regulation in the WCA market.

3.64 Eircom argued, secondly, that Sky is currently capable of accessing:

- (a) SIRO's network on a commercial basis;
- (b) Eircom's network on the basis of regulated inputs in the WLA market; and
- (c) will be able to access NBI's network on a prospective basis,

all absent regulation in the WCA market. It was therefore unclear to Eircom why Sky "*would be reliant on the provision of SIRO WLA alone.*"

3.65 In respect of NBI, Eircom noted that Condition 2 allows for a sizeable "*regional*" presence. As such, the fact that NBI is likely to have passed circa 5% of all premises in the State (as stated at paragraph 3.29 of the Consultation) is irrelevant. The relevant figure, in Eircom's view, is the 21% of premises in the Intervention Area ('IA') that NBI intends to have passed by the end of 2021. In addition, ComReg's MTA only considers the 2018 Regional WCA Market i.e. a sub-national market. As such, the coverage of NBI's network should only be considered at this sub-national level, rather than nationally.

3.66 Eircom also argued that ComReg considered it appropriate to designate SIRO as a PO as early as 2016: "*[a]s of September 2016, SIRO's network has a limited geographic footprint, although this is expected to grow further in the coming years. In September 2016, SIRO announced its rollout was gathering pace, with its network rollout now passing 10,000 premises a month across 17 towns.*" According to a December 2016 SIRO press release,⁶³ its network only passed circa 40,000 premises in 17 towns as at December 2016, a month after the publication of the 2016 WLA/WCA Consultation. Eircom noted that this was prior to SIRO having a "sizeable" national or regional presence.

⁶² See paragraph 3.44 above.

⁶³ <https://siro.ie/news-and-insights/siro-bt-announce-network-agreement/>

- 3.67 Eircom considered that this was the correct approach, given that it allowed for a forward-looking assessment. It is therefore important to consider NBI's rollout milestones up to the point that ComReg publishes its final Decision, as well as the intervening period between the publication of the Decision and the end of the WCA market review period. [X EIRCOM / NBI: ██████████
██████████
██████████
██████████ X]
- 3.68 Eircom argued that it was unclear how ComReg could conclude that there were no grounds to designate NBI as a PO, given that it will likely hold an effective monopoly position in the IA. It will not only have a sizeable regional network presence, but will also be the primary provider of wholesale access services in the IA.

ComReg's Assessment of Respondents' Views and final position

- 3.69 ComReg notes that, having regard to the criteria established in the 2018 Decision, for an SP to be designated as a PO, it must meet the two conditions outlined at Table 7 above. As described in paragraph 3.53, Sky fails to meet Condition 1, that being that it can access a network, absent regulation in the WCA markets, which is capable of providing WCA and/or retail broadband (and other) services using its own network inputs or inputs procured via the WLA market. Since the conditions for designation as a PO are cumulative, it was not necessary for ComReg to proceed to assess Condition 2.
- 3.70 Eircom implies that *"Sky is subject to an additional condition simply on the basis that it is not active in the merchant market provision of WLA or WCA to other SPs."* This is not so, and paragraph 3.21 of the Consultation should not be taken as applying an extra level of conditionality to Sky. Rather, it sets out how, in principle, Sky could be designated as PO, given that it is active in self-supply, but not in merchant market supply. Paragraph 3.21(a) of the Consultation recalls that an SP may, subject to meeting identified conditions, be included in the Relevant WCA Product Market where it offers retail broadband products on the basis of upstream WLA purchases. This is a restatement of paragraph 9.344 of the 2018 Decision. Paragraph 3.21(b) then affirms that, for designation as a PO, an SP must meet both Condition 1 and Condition 2. Accordingly, it is a misinterpretation to construe ComReg as placing an additional condition on Sky, over and above other SPs.
- 3.71 Eircom also argued that Sky is not reliant on the provision of SIRO WLA alone and that it was also capable of accessing Eircom WLA and NBI. With respect to NBI, at the time of the Consultation, rollout had not yet occurred, and Sky was therefore unable to access NBI. Furthermore, as set out above, as of July 2021, NBI network rollout is still very limited in geographic scope. Accordingly, even if Sky did make use of NBI WLA inputs, it would, in ComReg's view, be insufficient to suffice for designation as a PO, for the same reasons that ComReg considers it inappropriate to designate NBI as a PO at this time.

- 3.72 In respect of Eircom WLA, ComReg notes that Sky does not currently purchase Eircom WLA, and would therefore not be in a position, in a Modified Greenfield Approach scenario, to immediately and seamlessly switch to delivering retail broadband using Eircom WLA inputs. Accordingly, in such a scenario, ComReg considers that Sky would, in fact, be dependent on SIRO WLA in the short to medium term, pending NBI rollout on the one hand (which, for the avoidance of doubt, would be unlikely to pass a substantial number of premises previously served by Sky using Eircom WCA inputs, given that NBI will serve premises in the IA not currently – and not likely to be - served by NG Broadband on a commercial basis), and pending switchover to Eircom WLA on the other hand (which would also require investment in backhaul and other facilities).
- 3.73 In this regard, as of Q1 2021, Sky purchased [§< SKY: ██████████ §>] WLA lines from SIRO and did not purchase WLA from Eircom. However, Sky fails to meet Condition 2, in that it does not have a reasonably-sized market share capable of potentially exerting an effective competitive constraint on other competitors. While Sky is capable of accessing SIRO's network, Sky's current market share figures suggest that, absent regulation, it could not access a network capable of generating an effective indirect competitive constraint, because it would be reliant on the provision of SIRO WLA alone. Therefore, ComReg is satisfied that Sky does not meet the criteria required in order to be designated a PO.
- 3.74 As regards NBI, Eircom argued that NBI compliance with Condition 2 should be assessed at the sub-national, rather than national, level, given that Condition 2 may be satisfied on the basis of substantial regional presence. Eircom further argued that NBI rollout extending to the expected end of the WCA market review period in 2023 should be taken into account in ComReg's assessment.
- 3.75 ComReg notes that, while NBI passes Condition 1, it fails Condition 2 for the reasons set out in paragraphs 3.56 to 3.60 above. Condition 2 examines a potential PO's existing market share. While there is certainty as to which premises will be passed by NBI, there is less certainty as regards when premises will be passed, and this is reflected in the fact that NBI is itself unwilling to publish rollout forecasts beyond two years, and has specifically stated that *"All dates provided are estimated based on our current view, but are likely to change in the future."*⁶⁴
- 3.76 Therefore, even if ComReg restricted its assessment of NBI rollout to the 2018 Regional WCA Market, as suggested by Eircom, NBI's forecasts would nevertheless not yet be sufficiently reliable for the purpose of the MTA exercise.

⁶⁴ <https://nbi.ie/deployment-area-rollout-map/>, accessed on 3 September 2021.

- 3.77 Accordingly, ComReg cannot rely with sufficient levels of certainty on the rollout forecast provided to it by NBI in 2020 (reproduced at Table 8 above), including having regard to the need for ComReg to be able to precisely map individual premises coverage with certainty from a timing perspective. In these circumstances, ComReg considers that it is prudent at this point not to designate NBI as a PO up to the end of the WCA market review period.
- 3.78 That said, ComReg has assessed data provided to it by NBI to determine what the likely impact of NBI rollout would be over the remaining lifetime of this market review period. ComReg's analysis of these data indicates that, even if NBI were designated as a PO, it would have little or no impact on the Step 2 Criteria assessment. NBI rollout does not alter the status of EAs falling into the Revised Urban WCA Market, as these EAs already meet the necessary Step 2 criteria, without including NBI. Data available to ComReg indicate that NBI intends to roll out to [§ NBI: ■ §]⁶⁵ EAs at any level of coverage in the Revised Regional WCA Market over the remaining lifetime of this market review period.
- 3.79 Noting that, if designated as a PO, NBI would also be classified as an ANO, NBI's presence may (noting the uncertainties above) have the following impacts on the Step 2 Criteria as follows:
- (a) Criterion 1 may pass at [§ NBI: ■ §]⁶⁶ EAs currently assigned to the Revised Regional WCA Market where 2 POs are currently present, and NBI would bring the number of POs to 3;
 - (b) Criterion 4A may pass at [§ NBI: ■ §]⁶⁷ EAs currently assigned to the Revised Regional WCA Market, where NBI were to bring ANO coverage to 30% or more; and
 - (c) Both Criterion 1 and Criterion 4A would pass at [§ NBI: ■ §]⁶⁸ EAs currently assigned to the Revised Regional WCA Market.

Accordingly, ComReg's analysis suggests that, if NBI were designated as a PO, it would have an impact (in terms of the Step 2 criteria) on [§ NBI: ■ §]⁶⁹ EAs currently assigned to the Revised Regional WCA Market where it causes one or more criteria to move from a fail to a pass. However, it remains to be seen whether and which Service Providers will actually avail of NBI's services and in what specific locations. The impact on downstream competition is not yet readily quantifiable.

⁶⁵ 450-500.

⁶⁶ 50-100.

⁶⁷ 200-250.

⁶⁸ 50-100.

⁶⁹ 300-350.

- 3.80 ComReg then assessed whether, at these [redacted] EAs currently assigned to the Revised Regional WCA Market where Criterion 1, 4A or both now pass as a result of the potential presence of NBI, this would suffice to cause the EA to pass all relevant criteria, and therefore be redesignated as a Reassigned EA. ComReg’s analysis indicates that, applying the criteria in the same as is applied to other relevant POs, only five EAs⁷¹ would pass all necessary Step 2 criteria in order to be capable of being redesignated as a ‘Reassigned EA’. In [redacted] cases, the EA still failed the Step 2 criteria with certainty, even taking account of NBI, generally due to more than one criterion still failing, or due to NBI coverage being insufficient to pass Criterion 4A. In the remaining 215 cases the EAs fail based on the combination of Criteria 2, 3A and/or 4B failing the necessary market share thresholds. Over time, these criteria may move from failing to passing, but it is beyond the scope of this MTA to engage in such an inherently speculative and hypothetical assessment and in a manner not envisaged under the 2018 Decision or as is applied to other POs.
- 3.81 Accordingly, ComReg’s assessment indicates that, even if NBI were designated as a PO, its impact would be minimal, leading to an additional 5 EAs being redesignated as Reassigned EAs. The practical impact of this redesignation is set out in Table 9 below:

Table 9: Impact of additional 5 EAs on Revised Urban WCA Market, taking account of NBI

Revised Urban WCA Market	Ignore NBI	Count NBI	Difference (n)	Difference (%)
Exchange Areas	235	240	5	2.1%
Premises	1,300,311	1,311,237	10,926	0.8%
Subscriptions	959,577	966,605	7,028	0.7%

- 3.82 If NBI were designated as a PO, and based on potential rollout data to 2023 provided by NBI, this would lead to an addition 5 EAs being assigned to the Revised Urban WCA Market, amounting to an increase of 0.8% in the number of premises in that market, and 0.7% in the number of subscriptions in that market. On that basis, ComReg concludes that the impact of NBI over the remaining lifetime of this market review period would, even if it were designated as a PO, be minimal.

⁷⁰ 300-350.

⁷¹ [redacted].

⁷² 100-150.

- 3.83 Eircom also argued that NBI should be designated as a PO by analogy with the timing of ComReg's designation of SIRO as a PO on the WCA markets, as described at paragraph 3.67 above. ComReg disagrees with this characterisation. At the time of the 2016 Consultation, SIRO had passed almost 30,000 premises, and this figure had increased to approximately 250,000 premises by the time of the Decision. In contrast, the NBI contract had not been signed by the time of the 2016 Consultation or, indeed the 2018 Decision. At the time of the 2020 Consultation, NBI still had not passed any premises on an active basis and had yet to sign up customers. As set out in the preceding paragraph, as of June 2021, NBI has passed approximately [X NBI: [REDACTED] X] premises. This amounts to approximately [X NBI: [REDACTED] X]⁷³ of the premises passed by SIRO at the time of publication of the Decision in 2018. Accordingly, ComReg disagrees that the designation of SIRO as a PO based on its rollout at the time of the 2018 Decision in any way differs to the treatment in respect of NBI for this Decision, given the huge difference in rollout numbers between SIRO and NBI at equivalent decision publication points.
- 3.84 Bearing this in mind, ComReg is of the view that – even on a prospective basis - NBI is not yet capable of posing a sufficiently immediate and effective direct constraint on the focal product (and other substitutes) within the remaining lifetime of this market review period. Accordingly, ComReg has not designated NBI as a PO. Given the trivial levels of NBI rollout as at Q2 2021, ComReg considers it unlikely that the inclusion of NBI would have a material impact on the assessment of competitive conditions in the Relevant WCA Markets, even if it were designated as a PO.
- 3.85 Having considered Respondents' views above, ComReg is satisfied that it has effectively assessed the ability of both Sky and NBI to be designated as a PO and concludes that, as of June 2021, the evidence indicates that they do not meet the required conditions for inclusion.

Step 1: Application of 2018 WCA geographic market assessment indicators

- 3.86 As set out at paragraph 3.8 above, the Step 1 indicators are of general application in carrying out any geographic market assessment:
- (a) Geographic differences in entry conditions over time;
 - (b) Variation in the number and size of potential competitors;
 - (c) Distribution of market shares;
 - (d) Evidence of differentiated pricing strategies or marketing; and
 - (e) Geographical differences in demand characteristics.

⁷³ 0-10%.

Indicator (a): Geographic Differences in Entry Conditions

- 3.87 ComReg's 2018 assessment of indicator (a) continues to apply, *mutatis mutandis*, as of 2021, as set out in further detail in the following paragraphs. Eircom's copper Current Generation ('CG') network offers near-ubiquitous coverage. As a result, Eircom can offer CG broadband services on a widespread basis. Access Seekers using WLA inputs to provide WCA (or retail) services over Eircom's NG network can only do so in EAs where investments have been made to avail of WLA inputs. Given the cost of the investments and likely return, these investments are likely to be limited to larger EAs, or areas of higher population/premises density.
- 3.88 Eircom's NG network rollout is ongoing and, at present, passes close to 2 million premises. As of 30 June 2021, Eircom's FTTP network passed 675,000 premises, a 37% increase year-on-year,⁷⁴ with in excess of 450,000 premises added since the publication of the 2018 Decision. This NG network allows Eircom to provide faster broadband (and other) services than could be provided over its CG network. Eircom's NG footprint is limited to areas where it considers it is commercially viable to roll out the network. Access Seekers wishing to use Eircom WLA inputs to provide WCA (or downstream retail) services over Eircom's NG network may need to invest in backhaul and associated facilities to avail of the WLA input, if they have not already done so. The cost of rolling out a backhaul network and associated facilities at Eircom Aggregation Nodes means that an Access Seeker is likely to have a greater capacity and commercial incentive to provide WCA services, absent regulation in the WCA Market, to its potential WLA customer base in urban areas characterised by higher levels of premises density.
- 3.89 Similarly, the rollout of alternative networks (e.g. SIRO or Virgin Media) on a commercial basis depends heavily on premises density and the potential return on investment. Virgin Media's network is focussed on areas of higher population and premises density, predominantly in cities and larger regional towns. The extent of any indirect constraint from Virgin Media is limited to those EAs where Virgin Media has network presence. Virgin Media's network coverage passes 949,700 premises, as of Q2 2021 (43% of total premises) mostly in urban areas. This is an increase of approximately 7% on the Q4 2017 data on which the 2018 Decision was based.⁷⁵

⁷⁴

https://www.eir.ie/opencms/export/sites/default/.content/pdf/IR/presentations/2020_2021/eir_Q4_FY21_results_presentation.pdf. It is worth noting that, as of September 2021, Eircom has altered its reporting methodology. Prior to September 2021, Eircom made use of 'delivery points' and, as of March 2021, reported passing 820,000 premises, using that counting methodology. Eircom has now switched to reporting based on address points. This has the effect of reducing the count of premises passed. ComReg considers that address points based on postal addresses provide a more accurate reflection of premises passed, given that multiple delivery points may be present at a postal address, for instance in an office or apartment block.

⁷⁵ <https://www.libertyglobal.com/wp-content/uploads/2021/07/LG-Q2-2021-Press-Release.pdf> "Operating Data - June 30, 2021".

Respondents' Views

- 3.94 ALTO suggested that, in the past, ComReg has made the argument that high wholesale prices in Ireland arise from the high incidence of isolated premises. However, ALTO also noted that the population of Ireland (4.9 million) is akin to Madrid (6.6 million), and less than half that of Paris (12.2 million), so it is *“quite scalable in Ireland to determine competition to the sub-exchange level, particularly as most other operators do not use the same exchange boundaries as Eircom.”*⁷⁷
- 3.95 In ALTO’s view, in using the EA as the unit of geographic assessment, ComReg is not comparing like with like, and this will impact proper assessment and mask very significant parts of the EAs to limit competition and choice.
- 3.96 ALTO and BT both submitted that ComReg’s use of Eircom EA boundaries will arbitrarily limit supply choice for large groups of End Users. They argued that ComReg should be capable of determining to a far greater level of geographic resolution than the EA where competition is present, given the widespread availability of modestly powerful computers and ComReg access to both the Eircom APQ file and SIRO rollout information.
- 3.97 BT suggested that it was necessary to determine where competition is present at a more granular level, as a VUA connection provides access to all of Eircom NGA in an EA. In contrast, BT argued that a connection to an ANO could only be addressing a very small portion of an EA. Accordingly, deregulating with the addition of upstream supply risk has the potential to restrict competition in a sizable part of the EA. BT noted that SIRO network topology is defined differently to Eircom EA structure, and BT does not have access to enough information to compare actual coverage overlap.

ComReg’s Assessment of Respondents’ views and position

- 3.98 In accordance with the 2020 Explanatory Note and the 2014 BEREC Common Position, paragraphs A10.8 and A10.9 of the 2018 Decision note the conditions to which it should have regard when selecting the appropriate geographic unit for assessment. These include, but are not limited to, the selection of a unit which has *“clear and stable boundaries”* over time, *“reflect the network structure of relevant Service Providers”*, and most notably *“be small enough for competitive conditions to be unlikely to vary significantly within the unit, but large enough that the burden operators and NRAs face with regard to data delivery and analysis is reasonable.”*

⁷⁷ ALTO Submission, at p.5.

- 3.99 ComReg notes that, while the Eircom EA fulfils each of these requirements, individual premises do not. ComReg is satisfied that carrying out its assessment at the premises level would neither be appropriate nor feasible, given the granularity of data which would be required, and which may not be available. Furthermore, ComReg notes that the Eircom EA was chosen as the unit of geographic assessment in the 2018 Decision. The role of the MTA is to reapply these criteria to the Eircom EAs in the 2018 Regional WCA Market. Accordingly, if ComReg were to alter the unit of geographic assessment, this would result in a skewed and inconsistent MTA analysis, in comparison to the 2018 Decision, which would be wholly inappropriate, given the purpose of the MTA.
- 3.100 ALTO suggests that, given Ireland's population, which is smaller than various European cities, it should be possible to assess competition at levels below the EA. ComReg considers, however, that population is not, on its own the most appropriate metric to rely on in carrying out a geographic assessment. The key metric of network rollout which SPs tend to report, as evidenced by the financial reporting of both Eircom and Virgin Media, for instance, is not 'population served', but premises passed. The cost of network rollout to equivalent population numbers will vary substantially, depending on population distribution patterns. Accordingly, ComReg considers that the comparison between Ireland, which has a population density of 72 persons per square kilometre⁷⁸ with the Madrid Metropolitan Area or the NUTS 2 Île de France region,⁷⁹ which have population densities of 1,184 and 1,027 persons per square kilometre respectively,⁸⁰ is of limited analytical benefit.
- 3.101 Accordingly, and having considered Respondents' views, ComReg is satisfied with its designation of the Eircom EA as the appropriate unit of geographic assessment.

⁷⁸ Eurostat population density dataset, <https://ec.europa.eu/eurostat/databrowser/view/tps00003/default/table?lang=en>

⁷⁹ The population data quoted by ALTO appear to refer to the NUTS 2 regions of Île de France, rather than the NUTS 3 region of Paris.

⁸⁰ [Statistics | Eurostat \(europa.eu\)](#)

Indicator (b): Variation in the number and size of potential competitors

- 3.102 ComReg's 2018 assessment of indicator (b) continues to apply, *mutatis mutandis*, as of 2021, as set out in further detail in the following paragraphs. Eircom now faces greater constraints at certain EAs in the 2018 Regional WCA Market, compared to at the time of the 2018 Decision. These constraints arise from increased incidences of SPs purchasing WLA inputs to provide WCA services (or retail services), or further rollout by ANOs (Virgin Media and SIRO). However, at the vast majority of EAs in the 2018 Regional WCA Market, the intensity of competition measured by variation in the number and size of potential competitors compared to 2018 remains unchanged. Comparatively lower premises density in these EAs continues to imply that it is not commercially viable or profitable to offer broadband services by means of either WLA inputs or alternative network infrastructure, although ComReg notes that this may differ at the margins.
- 3.103 NBI is mandated to rollout FTTP broadband services in the IA, which overlaps with the footprint of the 2018 Regional WCA Market, as defined in the 2018 Decision, due in large part to intended NBI presence upon completion of network rollout – even at partial coverage levels – at over 90% of EAs nationwide. However, as set out above, ComReg considers that there are insufficient grounds to take account of prospective NBI rollout at this stage and, even if it did so, it has an immaterial impact on the application of the Step 2 criteria.
- 3.104 Eircom is the only PO present at all EAs in the 2018 Regional WCA Market, and has a WCA market share of 100% at any EAs where other SPs are not present on the basis of either direct constraints or indirect retail constraints. As set out in further detail below, Eircom's market share at an EA tends to fall as the number of competitors present (absent regulation in the WCA Market) increases. Figure A2.2 below shows that, as the number of POs present at an EA increases, Eircom's average market share declines, ranging from a market share of 100% where Eircom is the only PO present, to an average market share of 41-50%, where all five POs are present.
- 3.105 ComReg accordingly concludes in respect of indicator (b) that the conclusions of the 2018 Decision remain valid. Further geographic variation in the number and size of potential WCA competitors is now evident within the footprint of the 2018 Regional WCA Market, and this conclusion is supported by differences in NG network rollout levels across EAs as of Q1 2021, compared to 2018.

Respondents' Views

- 3.106 BT noted that ANOs are some time away from reaching equivalent levels of access to Eircom, and may in some cases have already reached their intended coverage in some areas, which may not be the complete area. Hence, in some locations, BT argued that ComReg's proposals put the provision of services by POs at risk.

3.107 BT also suggested that, while ComReg identifies just two ANOs, there are clearly three when Eircom is added. BT and ALTO noted that, since Virgin Media does not offer wholesale services to Access Seekers, the only ANO alternative to Eircom for Access Seekers is SIRO which is still rolling out its network and clearly does not have the same coverage as Eircom. In addition, SIRO has no backhaul network and, as such, only operates in the WLA market.

ComReg's Assessment of Respondents' Views and position

3.108 ComReg notes that BT's assertion that there are three ANOs, including Eircom, may be a misinterpretation by BT of the meaning of ANO. ComReg noted in footnote 1620 of the 2018 Decision and paragraph 1.8 of the Consultation that "*an ANO is a PO that has a network that exists independently of WLA and WCA SMP-based regulation. It follows that such networks would likely exist absent regulation.*" This means those network operators that exist other than Eircom, or those operators that exist and provide an *alternative* network to Eircom's own network. ComReg also notes that it is aware that SIRO currently only offers WLA-based services to Access Seekers. However, as set out in the 2018 Decision, given that SIRO could potentially offer WCA-based Bitstream products to Access Seekers in the future, it is appropriate to include SIRO's hypothetical supply of WCA as a supply-side substitute in the Relevant WCA Markets.

3.109 In respect of BT's concern that an ANO could potentially cause an EA to be assigned to the Revised Urban WCA Market (and therefore deregulated) by serving a very small portion of an EA, this concern is already addressed by Step 2 Criteria 4A and 4B, which specifically address ANO coverage and market share at an EA. Moreover, where an ANO is present at an EA, ANO presence at the necessary coverage or market share levels would be insufficient on its own to assign an EA to the Revised Urban WCA Market, and all other necessary criteria would also have to be satisfied. Accordingly, ComReg does not consider that there is a risk of ComReg deregulating an EA on the basis of very small ANO presence alone.

Indicator (c): Distribution of market shares

3.110 ComReg's 2018 assessment of indicator (c) continues to apply, *mutatis mutandis*, as set out in further detail in the following paragraphs. At the time of the 2018 Decision, market share distributions across SPs provided evidence in favour of the conclusion that separate geographic markets were warranted. As part of the MTA, ComReg considers that the distribution of market shares in EAs forming part of the 2018 Regional WCA Market provides evidence of the presence of differing competitive conditions.

3.111 In this regard, ComReg relies on market share data calculated as part of Step 2 at paragraphs 3.121 to 3.128 below. Table 11 below outlines PO market shares in the absence of regulation in the 2018 Regional WCA Market, broken down into those EAs that meet all relevant Criteria in the Consultation (the '**Candidate EAs**') and those that failed one or more of the Criteria. This is to assess whether competitive conditions may now differ across those EAs originally assigned to the 2018 Regional WCA Market, measured by market shares.

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Table 11: Regional WCA Market Retail Market Shares for POs (absent regulation) [X PARTIALLY REDACTED X]

Market Share	Eircom	Virgin Media	BT	Vodafone	Active Subscriptions ⁸¹	
					n	%
2018 Regional WCA Market⁸²	[X █████ X]	[X █████ X]	[X █████ X]	[X █████ X]	529,769	39.6%
Reassigned EAs Q1 2021⁸³	[X █████ X]	[X █████ X]	[X █████ X]	[X █████% X]	126,827	22%
Revised Regional WCA Market Q1 2021⁸⁴	[X █████ X]	[X █████ X]	[X █████ X]	[X █████ X]	438,482 ⁸⁵	78%

3.112 Table 11 indicates that there is evidence, based on market shares, of differing competitive conditions across two separate geographic areas within the footprint of the 2018 Regional WCA Market – the Reassigned EAs which meet the Step 2 Criteria (which therefore are identified as having characteristics similar to EAs in the 2018 Urban WCA Market), and those EAs that continue to fail one or more of the Step 2 Criteria. For example, in the Reassigned EAs, Virgin Media, Vodafone and BT all have substantially higher market shares than in the 2018 Regional WCA Market, and consequently, Eircom’s market share is considerably lower. Accordingly, competitive conditions at the Reassigned EAs are likely to be more akin to competitive conditions at the EAs constituting the 2018 Urban WCA Market. In contrast, market shares on the Revised Regional WCA Market suggest that competitive conditions remain similar to competitive conditions at the 2018 Regional WCA Market.

3.113 ComReg accordingly concludes in respect of indicator (c) that the conclusions in the 2018 Decision remain valid, namely that geographic variation in market share distributions are evident in the provision of WCA. Within the footprint of the 2018 Regional WCA Market, this conclusion is supported by differences in market share distributions between the Reassigned EAs meeting the Step 2 Criteria, and the Revised Regional WCA Market, compared to 2018.

⁸¹ Taken as a percentage of the total subscriptions in the defined 2018 Regional WCA Market using Q1 2021 figures. i.e. 565,309 subscriptions.

⁸² Market shares from the 2018 Decision: Eircom (71-80%), Virgin Media (0-10%), BT (0-10%), Vodafone (11-20%).

⁸³ The 81 EAs in the 2018 Regional WCA Market which now pass the geographic assessment criteria. Market shares: Eircom (41-50%), Virgin Media (10-20%), BT (11-20%), Vodafone (21-30%).

⁸⁴ The 968 EAs in the 2018 Regional WCA Market which again fail the geographic assessment criteria. Market shares: Eircom (61-70%), Virgin Media (0-10%), BT (0-10%), Vodafone (11-20%).

⁸⁵ The sum of active subscriptions and lines as of Q1 2021 is greater than the number for Q4 2017, arising from the presence of additional broadband customers in the 2018 Regional WCA Market over time.

Indicator (d): Evidence of differentiated pricing or marketing strategies

3.114 ComReg's assessment of indicator (d) in the 2018 Decision considered whether there was evidence of differentiated pricing or marketing that might indicate the presence of different regional or local competitive conditions, and in particular, geographically de-averaged or differentiated pricing in the provision of WCA. The 2018 Decision found that:

- (a) SPs often vary retail prices, bundling and marketing schemes in an area, based on the network technology (copper, FTTC or FTTP) available;
- (b) Retail broadband services are marketed nationally by most SPs, with local marketing campaigns following the rollout of new services; and
- (c) At the wholesale level, neither Eircom nor BT vary prices for WCA.

3.115 As set out at paragraphs 4.200 to 4.205 below, ComReg is aware of instances of Eircom charging different prices for WCA services in the 2018 Urban WCA Market, relative to the 2018 Regional WCA Market, on which WCA prices continue to be regulated. In respect of CG WCA, this differential arises from Eircom continuing to charge the former regulated rates on the now-deregulated 2018 Urban WCA Market, while prices continue to decline in line with regulatory obligations on the 2018 Regional WCA Market. ComReg notes that it has addressed Respondents' Submissions on this point in paragraph 3.31 above.

3.116 ComReg accordingly concludes in respect of indicator (d) that, within the footprint of the 2018 Regional WCA Market, ComReg has seen no material evidence of SPs differentiating their WCA pricing on a geographic basis. Accordingly, there is insufficient evidence of pricing or marketing strategies which are indicative of geographic variation between EAs forming the 2018 Regional WCA Market.

Indicator (e): Geographical differences in demand characteristics

3.117 ComReg's assessment in the 2018 Decision concluded that, at both the retail level and on the WLA market, there were limited differences in demand characteristics across regions, suggesting that the geographic scope of these markets was likely to be national, absent regulation. ComReg did not assess in detail whether the WCA market was characterised by geographical differences in demand characteristics. The absence of a positive finding of geographical differences in demand characteristics in respect of the provision of WCA suggests that in 2018, as with the retail broadband and WLA markets, there was no evidence that geographical differences in demand characteristics contributed to differences in competitive conditions across EAs.

3.118 ComReg accordingly concludes in respect of indicator (e) that the 2018 Decision conclusions remain valid - that geographical differences in demand characteristics do not appear to be indicative of geographic variation in competitive conditions within the footprint of the 2018 Regional WCA Market.

Conclusion on Step 1

3.119 Having reassessed the five geographic market assessment indicators under Step 1 above, ComReg concludes that three of the indicators – geographic differences in entry conditions, variation in the number and size of potential competitors, and distribution of market shares – provide evidence in favour of the contention that competitive conditions differ across EAs within the 2018 Regional WCA Market, to an extent which would, when considered alongside other factors below, justify differing competitive conditions between EAs.

3.120 In contrast, the remaining two indicators – evidence of differentiated pricing or marketing strategies, and geographical differences in demand characteristics – provide insufficient evidence in favour of the contention. This is consistent with ComReg’s findings in the 2018 Decision, which also found that the same three indicators provided evidence in favour of the contention that competitive conditions differed across EAs. Accordingly, Step 1 provides mixed evidence in respect of differences in competitive conditions between EAs forming part of the 2018 Regional WCA Market. On balance, however, ComReg considers that the indicators provide sufficient evidence to suggest that there are, in fact, differences in competitive conditions between EAs constituting the 2018 Regional WCA Market. Accordingly, ComReg moves to carry out Step 2 of its analysis, which applies a set of criteria to determine how to group these sets of EAs.

Step 2: Application of 2018 WCA geographic market assessment Criteria

3.121 Table 3 above sets out the Step 2 geographic assessment criteria which, along with the Step 1 indicators, are used to ascertain whether conditions of competition in EAs are sufficiently homogeneous to warrant the definition of a single national market, or whether the conditions of competition are sufficiently different between certain EAs, such that separate geographic markets should be distinguished. ComReg accordingly sets out a range of cumulative criteria, based around the following parameters:

- (a) A minimum number of SPs;
- (b) Network presence;
- (c) SPs’ market shares;
- (d) Network coverage of alternative networks; and
- (e) Reasonable additions.

- 3.122 These parameters give rise to a set of cumulative criteria that allow an EA to be assigned to the correct sub-national geographic market, along with other EAs which share similar competitive characteristics. The reasoning underpinning the selection of the Step 2 Criteria was set out at Section 10 of the 2016 Consultation, and further refined at Section 9 of the 2018 Decision.
- 3.123 As part of the MTA, ComReg reapplies these Step 2 Criteria to the 1,049 EAs forming part of the 2018 Regional WCA Market, in order to identify EAs which share similar competitive characteristics, and should be grouped together. This allows for the identification of EAs where competitive characteristics do not appear to have altered since the 2018 Decision, and EAs which appear to be characterised by changed competitive conditions since the 2018 Decision, such that these EAs potentially exhibit characteristics similar to those of the 2018 Urban WCA Market. The full Step 2 analysis of the 2018 Regional WCA Market – including the information relied on, and the associated time periods - is set out at Annex: 2 below. In the paragraphs that follow, ComReg highlights the key findings from this analysis and the implications for the potential re-definition of the geographic scope of the 2018 Relevant WCA Markets.
- 3.124 On the basis of the application of the geographic assessment criteria, in the 2018 Decision, ComReg defined a 2018 Urban WCA Market consisting of 154 EAs and a 2018 Regional WCA Market consisting of 1,049 EAs, as set out below. The identities of the EAs falling into the 2018 Urban WCA Market and the 2018 Regional WCA Market were set out at Appendix 11 of the 2018 Decision.

Table 12: Application of Criteria for Assessing Competitive Conditions by Geographic Area – 2018 Decision

	Exchange Areas		
	n	Premises	Subscriptions ⁸⁶
2018 Urban WCA Market	154	1,061,911	809,006
2018 Regional WCA Market	1,049	1,143,977	529,769

- 3.125 Accordingly, in the 2018 Decision, ComReg defined two separate, distinct geographic markets in the provision of WCA services:
- (a) The **2018 Urban WCA Geographic Market**, being those 154 EAs where the relevant Step 2 Criteria were met; and
 - (b) The **2018 Regional WCA Geographic Market**, being those 1,049 EAs where the relevant Step 2 Criteria were not met.

⁸⁶ Total retail and wholesale subscriptions delivered over all access technologies falling into the relevant product markets.

3.126 In accordance with the 2018 Decision, ComReg has applied the Step 1 analysis, which indicates the presence of differences in competitive conditions between EAs forming the 2018 Regional WCA Market. ComReg now proceeds to apply the Step 2 Criteria to the 1,049 EAs constituting the 2018 Regional WCA Market. Table 13 below presents the outcome of this assessment, with the supporting detail set out at Annex: 2. The Step 2 analysis suggests that the number of EAs passing all relevant criteria has increased since the 2018 Decision. This has largely been driven by reductions in Eircom market share facilitated, *inter alia*, by uptake of VUA services by POs making use of WLA inputs (i.e. investment in backhaul facilities at Eircom Aggregation Nodes).⁸⁷ By investing in backhaul facilities, WLA-based POs have also been able to grow market share. Uptake of VUA services has also been driven by Eircom and SIRO FTTP network expansion, as well as expansion in Virgin Media network coverage.

Table 13: Application of Step 2 Criteria for Assessing Competitive Conditions on 2018 Regional WCA Market EAs – Q1 2021

	Number of EAs	Total Premises in EAs
Reassigned EAs (which meet Step 2 Criteria)	81	202,053
EAs <i>not</i> meeting Step 2 Criteria	968	971,213
Total	1,049	1,173,469 ⁸⁸

⁸⁷ An 'Aggregation Node' or 'AGG node' means a network concentration point for Access Paths.

⁸⁸ As indicated, there are 29,492 additional premises in the 2018 Regional WCA Markets, due to new premises builds since the publication of the 2018 Decision.

3.127 The 2020 Consultation identified a total of 82 Candidate EAs, however this figure has fallen to 81 Reassigned EAs in this Decision. Not all of the 81 Reassigned EAs in this Decision were included in the total of 82 Candidate EAs. The 81 Reassigned EAs are clearly identified in Annex: 3 of this Decision. The reasons for this decline from 82 EAs to 81 EAs are set out at Annex: 2 at paragraphs A 2.39 to A 2.45 below. Briefly, at certain EAs, ComReg had determined in the Consultation that Criterion 3 passed where BT offered WCA. However, in its Submission, BT noted that it was not present on the basis of WLA at these EAs. It follows that any BT sales at those EAs would have been made on the basis of its purchases of WCA from Eircom. Accordingly, Criterion 3 was not, in fact, met at some of these EAs. This led to a decline in the number of Candidate, or Reassigned, EAs. Additionally, at certain EAs, ComReg reassessed the way in which it had applied certain of the exception criteria, to ensure that the methodology was consistent with that set out in the 2018 Decision. The decline arising from these two factors is almost balanced out by the net increase in EAs passing all relevant criteria at Q1 2021 which had failed one or more criteria using the Q2 2020 data set out in the Consultation. In most instances, these EAs failed the Step 2 assessment in Q2 2020 due to Eircom's market share being too high, but Eircom's market share had fallen by Q1 2021. Accordingly, and having updated its assessment based on more recent data from Q1 2021, the final figure of Reassigned EAs in this Decision is 81.

Conclusion on Step 2

3.128 Step 2 suggests that 81 Reassigned EAs, the identities of which are set out at Annex: 3 below, now exhibit competitive conditions which are more sufficiently consistent with competitive conditions at EAs constituting the 2018 Urban WCA Market, rather than at EAs constituting the 2018 Regional WCA Market.

Respondents' Views

3.129 Sky considered that, if ComReg retained the Step 2 Criteria, which, in its view, would be an error based on available evidence, adding an additional stage to the process could help avoid serious errors such as the FTTC Bitstream price increases which occurred following deregulation of the 2018 Urban WCA Market.

3.130 Sky proposed that, once the Reassigned EAs have been identified using the Step 2 Criteria, ComReg should engage with SPs over a three to six-month period to establish why particular EAs may need closer scrutiny. This could form a sixth stage in the assessment process ('Stage 6 Exchanges', using Sky's terminology). Where concerns are raised in relation to particular EAs, such EAs would be examined in detail by ComReg. Only after ComReg has assessed Stage 6 EAs and is satisfied that viable alternatives exist for SPs with respect to backhaul should such EAs be moved to the Revised Urban WCA Market. For EAs where no concerns are raised by any SP, deregulation should proceed as normal.

3.131 Such a process is, in Sky's view, transparent, fair and reasonable, and provides regulatory certainty by removing the risk of inappropriately removing an EA from the 2018 Regional WCA Market in a manner that would be damaging to competition and detrimental to consumers. The process would also allow ComReg to cross-check different SPs' experiences and circumstances in a manner that would assist in refining the existing geographic assessment criteria.

ComReg's Assessment of Respondents' Views and position

3.132 As set out at paragraph 1.65 of the 2018 Decision, the function of the MTA is to enable ComReg to capture the potentially dynamic nature of the Relevant WCA Markets through the reapplication of Step 1 and Step 2 used in the 2018 Decision to categorise each EA in the State according to the level of infrastructure competition, and group those EAs into, respectively, the 2018 Urban WCA Market, and the 2018 Regional WCA Market. ComReg notes, having outlined the scope of the MTA in the 2018 Decision, that it is not appropriate to include an additional stage to its analysis as this is outside the remit of the MTA. In doing so, it would result in the 2018 and 2021 analysis being inconsistent, meaning that contrary to Sky's argument, would provide less, not more, regulatory certainty.

3.133 The Step 1 and Step 2 criteria are designed to effectively delineate separate geographic markets, where appropriate, thereby enabling ComReg to effectively determine which EAs may now fit the criteria for deregulation. Therefore, having considered Respondents' view above, ComReg is satisfied that this process is transparent, fair, reasonable, and based on objective criteria, and is of the view that an additional stage in its process is unwarranted and unnecessary, given the rigorous process which is already in place. ComReg also notes that SPs have the opportunity to make their views (including experiences) known as part of the consultation process.

Conclusion on Relevant WCA Markets Definition

3.134 As set out in the 2018 Decision, ComReg indicated that it would carry out a MTA, given the potential dynamic nature of the 2018 Relevant WCA Markets over the lifetime of the 2018 Decision. The WCA product market remains as defined in the 2018 Decision, but ComReg has reassessed the WCA geographic markets in accordance with the analytical steps set out in the 2018 Decision.

3.135 ComReg defines those SPs that can operate independently of WCA regulation as Primary Operators ('**PO(s)**'). ComReg has not defined any additional POs in its assessment. ComReg has then reapplied Step 1 and Step 2 to the 1,049 EAs which form the 2018 Regional WCA Market.

- 3.136 The conclusions arising from Step 1 and Step 2 indicate that there are sufficient reasons, including on quantitative grounds, to distinguish two sets of EAs within the 2018 Regional WCA Market. The analysis provides sufficient evidence to indicate that 81 EAs in the 2018 Regional WCA Market (the **'Reassigned EAs'**) are characterised by sufficiently different competitive conditions, relative to the other 968 EAs in that market. Moreover, the Reassigned EAs exhibit competitive conditions which are sufficiently homogenous with the EAs forming the 2018 Urban WCA Market.
- 3.137 On the basis of the above analysis, ComReg re-allocates the 81 Reassigned EAs from the 2018 Regional WCA Market to the Revised Urban WCA Market, thereby increasing the geographic scope of the 2018 Urban WCA Market (now the **'Revised Urban WCA Market'**), while reducing the geographic scope of the 2018 Regional WCA Market (now the **'Revised Regional WCA Market'**). Table 14 below outlines these changes. In comparing premises and active subscriptions/lines, and in addition to changes in premises between the 2018 Urban WCA Market and 2018 Regional WCA Market, there will also have been a small increase in the total number of premises in the State based on housing activity (+65,636). Likewise, with active subscriptions/lines, the market will have increased in size by a small amount based on new broadband subscribers (+51,938).

Table 14: Regional WCA Market and Urban WCA Market boundary alterations

		Urban WCA	Regional WCA	Total
Exchange Areas	2018 Decision	154	1,049	1,203
	Q1 2021 ⁸⁹	235	968	1,203
	Change	81	-81	0
Premises	2018 Decision	1,061,911	1,143,977	2,205,888
	Q1 2021	1,300,311	971,213	2,271,524
	Change	238,400	-172,764	65,636
Subscriptions/ Active Lines	2018 Decision	809,006	529,769	1,339,105
	Q1 2021	959,577	438,482	1,398,059
	Change	150,241	-91,287	58,954

3.138 Table 14 above is reproduced below, but with changes shown in percentages.

⁸⁹ In respect of EAs, premises, and subscriptions / active lines, the 'MTA Q1 2021' figures for the Urban WCA Market refer to the entirety of the Revised Urban WCA Market defined by means of this Decision.

Table 15: Alteration of Regional WCA Market and Urban WCA Market boundaries, %

		Urban WCA	Regional WCA	Total
Exchange Areas	2018 Decision	13%	87%	100%
	MTA Q1 2021	20%	80%	100%
	% Point Change	7%	-7%	
Premises	2018 Decision	48%	52%	100%
	MTA Q1 2021	57%	43%	100%
	% Point Change	9%	-9%	
Subscriptions/ Active Lines	2018 Decision	60%	40%	100%
	MTA Q1 2021	69%	31%	100%
	% Point Change	9%	-9%	

3.139 ComReg accordingly assigns the Reassigned EAs from the 2018 Regional WCA Market to the Revised Urban WCA Market on the grounds that conditions of competition in the Reassigned EAs are now sufficiently similar to conditions of competition at the EAs falling within the 2018 Urban WCA Market, rather than to the 2018 Regional WCA Market, as follows:

- (a) The **Revised Urban WCA Market**, being the 235 EAs at which the Step 2 Criteria are met on a cumulative basis, 154 of which were so designated by means of the 2018 Decision, together with a further 81 Reassigned EAs which ComReg transfers, by means of this MTA Decision, from the 2018 Regional WCA Market to the Revised Urban WCA Market, and
- (b) The **Revised Regional WCA Market**, being those 968 EAs where the Step 2 Criteria were not cumulatively met, 1,049 of which were originally so designated by means of the 2018 Decision. ComReg now transfers 81 Reassigned EAs, by means of this MTA Decision, from the 2018 Regional WCA Market to the Revised Urban WCA Market.

3.140 Having carried out an assessment of the geographic boundaries of the Revised Regional WCA Market and the Revised Urban WCA Market (together, the '**Revised Relevant WCA Markets**'), ComReg moves at Section 4 below to carry out a competition analysis and assessment of SMP on the Reassigned EAs which are transferred to the Revised Urban WCA Market.

4 Competition Analysis

4.1 In this Section, ComReg analyses competition on the Revised Relevant WCA Markets, as set out at Section 3 above. ComReg does so in order to determine whether the competition assessment in the 2018 Decision in respect of the 2018 Relevant WCA Markets applies equally in respect of the Revised Relevant WCA Markets, having regard to the fact that the Reassigned EAs which formed part of the 2018 Regional WCA Market have now been transferred to the Revised Urban WCA Market. Specifically, ComReg assesses whether competition at the Reassigned EAs exhibits characteristics which are sufficiently similar to competition in the 2018 Urban WCA Market which has already been deregulated.

Competition Assessment of the 2018 Urban WCA Market in the 2018 Decision

- 4.2 Prior to doing so, ComReg sets out below a summary of the analysis in the 2018 Decision which found that the 2018 Urban WCA Market was effectively competitive, and that no finding of SMP was warranted. The 2018 Decision analysis was conducted during the currency of the 2014 Recommendation on Relevant Markets, which identified WCA as a market susceptible to *ex ante* regulation. Accordingly, it was not necessary at the time of the 2018 Decision to carry out a Three Criteria Test ('3CT') in respect of the 2018 Relevant WCA Markets, and ComReg proceeded directly to an assessment of whether the WCA markets were characterised by the presence of SMP or not.
- 4.3 As set out at paragraph 10.3 of the 2018 Decision, ComReg identified a range of economic characteristics set out in the SMP Guidelines which it deemed to be relevant to the assessment of competition in the 2018 Relevant WCA Markets, and which it grouped under three broad headings:⁹⁰
- (a) **Existing competition:** vertical integration, market shares, relative strength of existing competitors, barriers to expansion, economies of scale and scope, indirect constraints, and pricing behaviour;
 - (b) **Potential competition:** the overall size of the undertaking, an assessment of control of infrastructure not easily duplicated, barriers to entry in the Relevant WCA Markets, as well as the overall strength of potential competitors; and
 - (c) **Strength of any countervailing buyer power ('CBP'):** the impact of any strong buyers of WCA on the competitive behaviour of WCA providers.
- 4.4 ComReg summarises below the findings it made under these three competition assessment headings in respect of the 2018 Urban WCA Market.

⁹⁰ In paragraphs 11.3 and 11.7 and Appendix 11 of the 2016 Consultation, other factors were considered but deemed to be of less or no relevance to the SMP assessment in the 2018 Relevant WCA Markets.

Existing competition

- 4.5 ComReg concluded⁹¹ that Eircom faced direct and indirect constraints from existing competition in the 2018 Urban WCA Market arising, in particular, from BT (direct constraint), Virgin Media and Vodafone (both indirect constraints). ComReg determined that, when considered alongside other factors, this was indicative that no SP had SMP in the 2018 Urban WCA Market.

Market shares

- 4.6 Absent regulation in the 2018 Urban WCA Market, ComReg identified that Eircom faced competition from at least two other POs capable of providing retail or broadband services, and such competition was reflected in market share thresholds. As a result, Eircom's 2018 Urban WCA Market share (<40% in Q4 2017) was significantly lower than its 2018 Regional WCA Market share (>75% in Q4 2017).
- 4.7 ComReg accordingly concluded that Eircom's market share in the 2018 Urban WCA Market suggested (considered alongside other factors) that it faced greater competitive constraints on that market, than on the 2018 Regional WCA Market.

Indirect constraints

- 4.8 The 2018 Urban WCA Market, by construction, is an area where Eircom faces greater constraints in the provision of WCA relative to the 2018 Regional WCA Market. The 2018 Decision determined that the presence of certain vertically-integrated SP on the retail market by means of self-supply could, subject to certain conditions, pose a sufficiently strong indirect constraint on Eircom's supply of WCA. ComReg concluded that certain vertically-integrated retail SPs, in particular, Virgin Media and Vodafone, provided such an indirect constraint on Eircom's supply of WCA within those geographic areas where they had a network presence.

Pricing behaviour

- 4.9 In the 2018 Decision, ComReg concluded that Eircom would not likely be in a position to profitably raise prices above the competitive level, limiting its ability to behave, to an appreciable extent, independently of competitors, customers or consumers on the 2018 Urban WCA Market.

⁹¹ At paragraphs 10.76 to 10.88, and 10.115 to 10.117 of the 2018 Decision.

Potential competition

4.10 In assessing potential competition in the 2018 Decision,⁹² ComReg considered factors under two sub-headings, as set out below. ComReg concluded that, absent regulation, and given its network expansion, potential competition from SIRO would, combined with existing competition, likely further constrain Eircom on the 2018 Urban WCA Market. At the time of the 2018 Decision, ComReg did not include NBI in its assessment on a forward-looking basis, given the lack of certainty in respect of the NBP contract award, the timing of the NBP rollout and any resulting impact on competition, at that time.

Barriers to entry and expansion

- 4.11 In assessing barriers to entry and expansion, ComReg considered various factors:
- (a) Size of the undertaking and control of infrastructure not easily replicated;
 - (b) Sunk costs;
 - (c) Economies of scale, economies of scope and economies of density; and
 - (d) Vertical integration.
- 4.12 In respect of **(a)**, ComReg concluded that, in the 2018 Urban WCA Market, Eircom faced competition from those POs (Vodafone, BT (and purchasers of its WCA services, including Sky), and Virgin Media) which had, to a reasonable degree, overcome barriers to entry and which, on a forward-looking basis, should enable them to compete with Eircom and each other, absent regulation.
- 4.13 In respect of **(b)**, ComReg concluded that sunk costs did not seem to sufficiently undermine entry and/or expansion in the 2018 Urban WCA Market. Sunk costs could be reduced if the potential entrant had an existing network in place (e.g. Virgin Media or SIRO), or if a purchaser of upstream WLA (e.g. Vodafone) incurred the necessary additional investments. ComReg noted that, in the cases of Vodafone, Virgin Media and SIRO, the relevant networks were predominantly located in the footprint of the 2018 Urban WCA Market.
- 4.14 In respect of **(c)**, ComReg concluded that economies of scale, scope and density were not indicative of Eircom having SMP. A number of SPs made network investments to take advantage of the higher premises density on the 2018 Urban WCA Market, which facilitated easier, more cost effective network rollout.

⁹² At paragraphs 10.89 to 10.93, and 10.118 to 10.119 of the 2018 Decision.

- 4.15 In respect of **(d)**, ComReg concluded that Eircom may, as a vertically-integrated SP, face lower incentives to exercise SMP on the 2018 Urban WCA Market. Insofar as indirect constraints are concerned, rather than losing a retail customer to another independent network (and the entire loss of profitability from that customer), Eircom may face some incentive to provide wholesale services to SPs (as in this scenario it retains the profit from wholesale sales).

Strength of potential competitors

- 4.16 In considering the strength of potential competitors, ComReg assessed:
- (a) Building an independent network to offer WCA; and
 - (b) Adapting an existing network to provide WCA.
- 4.17 In respect of option **(a)**, ComReg noted that, even if independent network build were unlikely, Eircom already faced greater network competition in the 2018 Urban WCA Market from Virgin Media, BT, Vodafone and, prospectively, by SIRO, whose rollout was likely to fall more within the footprint of the 2018 Urban WCA Market.
- 4.18 In respect of option **(b)**, ComReg included hypothetical supply by SIRO in the WCA market on the basis of supply-side substitution. Given that SIRO's current and expected network footprint would largely be confined to the 2018 Urban WCA Market, ComReg concluded that, other than SIRO, adapting an existing network to offer WCA would not sufficiently constrain Eircom on the 2018 Urban WCA Market.

Countervailing Buyer Power ('CBP')

- 4.19 ComReg concluded that CBP would be insufficient, on its own, to act as an effective competitive constraint on Eircom.⁹³ In assessing CBP on the 2018 Urban WCA Market, ComReg considered three factors:
- (a) Size of the buyer and its relative importance to the seller;
 - (b) Credible alternative sources of supply; and
 - (c) Evidence of bargaining power from negotiations.
- 4.20 In respect of factor **(a)**, ComReg concluded that the relative size of WCA purchasers did not suggest that they would have a sufficiently strengthened bargaining position regarding price or other terms of supply. ComReg noted that the 2018 Urban WCA Market was characterised by the greater availability of retail broadband services from alternative SPs, which could possibly suggest a greater level of CBP, compared to the 2018 Regional WCA Market. ComReg nevertheless concluded that even this greater level of CBP would not be sufficient to exercise an effective constraint on Eircom supply of WCA on the 2018 Urban WCA Market.

⁹³ At paragraphs 10.94 to 10.95, and 10.120 to 10.121 of the 2018 Decision.

- 4.21 In respect of factor **(b)**, ComReg concluded that, by the nature of its construct, the 2018 Urban WCA Market is an area where Eircom faces greater competition from credible alternative sources of WCA supply (BT), as well as networks capable of supplying WCA (SIRO), and also indirectly from Virgin Media and Vodafone.
- 4.22 In respect of factor **(c)**, ComReg found no evidence of purchaser bargaining power in negotiations in the 2018 Urban WCA Market.

Reassigned EAs Competition Assessment

- 4.23 ComReg seeks to determine whether competition at the Reassigned EAs, which ComReg now transfers to the Revised Urban WCA Market, is sufficiently similar to competition at the 2018 Urban WCA Market, such that the same conclusions – namely, that the EAs are characterised by sufficiently effective competition, and that SMP obligations should therefore be removed – are warranted.
- 4.24 As set out at paragraph 2.20 above, ComReg considers that this MTA is an interim update, rather than a full new market review. Accordingly, ComReg considers that the MTA is governed by the 2014 Recommendation which was in place at that time, and it is not necessary to carry out a 3CT for the purposes of the MTA. Nevertheless, for the sake of completeness, ComReg carries out a 3CT on the Reassigned EAs, given that the 2014 Recommendation was replaced in December 2020 by the 2020 Recommendation.

Three Criteria Test ('3CT')

- 4.25 ComReg notes that the 2020 Recommendation does not include the WCA market on its list of markets deemed susceptible to *ex ante* regulation. Accordingly, at EU level, there is no presumption in favour of continuing to regulate this market. ComReg must therefore determine whether, in light of national circumstances, the Reassigned EAs defined at Section 3 continue to warrant regulation.
- 4.26 ComReg can only carry out a 3CT on a duly-defined market. Accordingly, it cannot carry out a 3CT on the Reassigned EAs alone, which only form that part of the 2018 Regional WCA Market transferred to the Revised Urban WCA Market. ComReg therefore carries out a 3CT on the Revised Urban WCA Market, including the Reassigned EAs, and on the Revised Regional WCA Market.

- 4.27 While the 2014 Recommendation included the WCA market on the list of markets deemed susceptible to *ex ante* regulation, it has subsequently been removed from the 2020 Recommendation. ComReg has chosen to undertake a Three Criteria Test ('3CT') to establish whether, in light of national circumstances, the Revised Relevant WCA Markets defined at Section 3 above warrant regulation. The 3CT set out in Article 67(1) of the EEC and described in the 2020 Explanatory Note⁹⁴ is the mechanism which allows for this assessment to be carried out in a structured and objective way.⁹⁵
- 4.28 The 3CT sets out the criteria that must be cumulatively satisfied in order to determine that a relevant market should be, or should continue to be, subject to *ex ante* regulation. The three criteria are:
- (a) the presence of high and non-transitory barriers to entry (paragraphs 4.30 to 4.139 below);
 - (b) a market structure which does not tend towards effective competition within the relevant time horizon (paragraphs 4.140 to 4.183 below); and
 - (c) the insufficiency of competition law alone to adequately address the market failure(s) concerned (paragraphs 4.184 to 4.190 below).
- 4.29 ComReg's Reassigned EAs 3CT findings are set out in paragraph 4.191 below.

Criterion 1: The presence of high and non-transitory barriers to entry

- 4.30 The 2020 Explanatory Note⁹⁶ identifies that high, non-transitory barriers to entry may be structural, legal or regulatory in nature:
- (a) **Structural barriers to entry** arise where technology or network characteristics (e.g. cost structure, level of demand) create asymmetric conditions between SPs. Examples include the presence of absolute cost advantages, substantial economies of scale or scope, capacity constraints, and high sunk costs.

⁹⁴ Explanatory Note to Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the '**2020 Explanatory Note**').

⁹⁵ The 2020 Explanatory Note indicates on page 81 that: "The circumstance may arise that an NRA is in the process of conducting a market review, including a public consultation in accordance with Article 32 of the Code, at the time when the updated Recommendation is adopted. If an NRA considers regulation of a market, which would no longer be included in the updated Recommendation, then it should apply the three criteria test in order to assess whether based on national circumstances that market would still be susceptible to *ex ante* regulation. Therefore, the notified draft decision should outline and justify why the three criteria are satisfied."

⁹⁶ At p.11.

- (b) **Legal or regulatory barriers** result from legislative, administrative or other state measures that directly affect the relevant market. Examples include legal requirements related to the necessary permissions to roll out infrastructure (e.g. planning permission for civil works, or the need to obtain rights of way to roll out a network over private property).

Structural barriers to entry

- 4.31 ComReg has examined the nature and extent of any barriers to firms both entering and, subsequently, expanding⁹⁷ in the Reassigned EAs.
- 4.32 Barriers to entry generally comprise any disadvantage that a new entrant faces when entering a market, when incumbents do not currently face such barriers. According to the 2020 Explanatory Note:⁹⁸

“...high structural barriers may be found to exist when the market is characterised by absolute cost advantages, substantial economies of scale and/or economies of scope, capacity constraints, and high sunk costs. Such barriers can be found in sectors that rely on the deployment of networks, such as fixed networks.”

- 4.33 Barriers to growth and expansion are obstacles that a new entrant (or smaller existing competitor) faces in its ability to grow or expand in a particular market, and which limit its ability to exert an effective competitive constraint over the medium to longer term.
- 4.34 Assessing barriers to entry and expansion first involves identifying credible threats of entry into the Reassigned EAs. To do so, a potential entrant must provide a product that, at the very least, meets the characteristics of the WCA products set out in the 2018 Decision, thereby meeting the expectations of Access Seekers.
- 4.35 A number of factors need to be considered as to whether they may act as structural barriers to entry to the Reassigned EAs:
 - (a) The incumbent supplier of WCA can control infrastructure that is difficult for a new entrant to replicate;
 - (b) The incumbent has a large customer base and diversified product range, and therefore benefits from significant economies of scale, scope and density;
 - (c) Entry to the WCA market may be likely to incur considerable sunk costs; and
 - (d) The incumbent may benefit from being vertically-integrated.

⁹⁷ ComReg notes that barriers to expansion are typically considered under constraints from existing competition, however, given similarities associated with issues concerning barriers to entry, they are considered in this context.

⁹⁸ 2020 Explanatory Note, page 12.

4.36 ComReg also notes that there appears to be a divergence in respect of how high and how stable Eircom market shares have evolved since the 2018 Decision in the Reassigned EAs on the one hand, and the Revised Regional WCA Market, on the other hand. ComReg now considers evidence in respect of each of the five potential structural barriers to entry listed above.

Eircom controls infrastructure that is difficult for a new entrant to replicate

4.37 Eircom's fixed narrowband access ('FNA')⁹⁹ network is ubiquitous in the State, and it also operates the largest FTTx network in the State. Eircom uses these networks to deliver CG and NG WCA to Access Seekers across the footprints of both the Revised Urban WCA Market and the Revised Regional WCA Market.

4.38 As of Q1 2021, Eircom is the largest supplier of merchant market WCA in the Reassigned EAs and the Revised Regional WCA Market (but not the Revised Urban WCA Market), as set out at Table 23 below. Eircom controls an extensive access infrastructure that is not easily replicated by many of its competitors at the same level of coverage.¹⁰⁰ Eircom also benefits from its large network coverage, subscriber base size and product portfolio, thereby giving it the ability to exploit greater economies of scale and scope in the provision of WCA than would otherwise be achievable by potential competitors.

4.39 To commence the provision of WCA at the Reassigned EAs, an SP may roll out its own network infrastructure, or, in the alternative, purchase access to another SP's network – either commercially or using regulated inputs. While some SPs, for instance Vodafone, purchase WLA inputs (from both Eircom and SIRO) to facilitate the delivery of retail broadband (and other services) in preference to engaging in network investment, as identified at Section 3 above, other SPs are progressively rolling out their own networks, either on the basis of commercial rollout (for example, SIRO and, to a lesser extent, Virgin Media), or, on a forward-looking basis, on the basis of a government policy decision to provide WLA and WCA services on a non-commercial basis (via NBI). The timing and coverage of network rollout differs amongst these SPs. Accordingly, no SP appears to have the intention – or the incentive - to roll out a network at least as ubiquitous as Eircom's legacy FNA network or, indeed, Eircom's NG network (i.e. which rolls out to both the commercially attractive Revised Urban WCA Market, and the less commercially attractive Revised Regional WCA Market)¹⁰¹ as Table 16 indicates:

⁹⁹ Fixed narrowband access describes network infrastructure typically delivered over legacy copper, and can also be described as Current Generation ('CG') infrastructure.

¹⁰⁰ However, it may not be necessary to fully replicate Eircom's infrastructure in order to pose a potential competitive constraint on the Reassigned EAs.

¹⁰¹ By 'commercially attractive', ComReg means that, given the premises densities in areas, some will be more commercially attractive to invest in than others.

Table 16: Eircom, Virgin Media, SIRO, NBI network rollout, September 2021

Network	Rollout		Coverage %	
	To date	Target	To date	Target
Eircom FNA	2.4 million	2.4 million	100%	100%
Eircom FTTx (VDSL + FTTP)	1.9 million ¹⁰²	2.3 ¹⁰³ million	84%	85%
Virgin Media	946,500	N/A	39%	N/A
SIRO	394,000	450,000	15%	19%
NBI	0	544,000 ¹⁰⁴	2%	23%

4.40 It is clear that, based on announced network rollout plans, no SP contemplates rolling out a network as ubiquitous as that of Eircom, and therefore replicating Eircom’s nationwide coverage. This suggests that it would be difficult for a new entrant to fully replicate Eircom’s network infrastructure, without incurring substantial sunk costs which it would be unlikely to recover in the short term. Even SIRO, which is able to benefit to a certain degree from its use of elements of an electricity network which has ubiquity equivalent to Eircom’s FNA network, only currently intends to roll its network out to 19% of premises in the State. However, ComReg notes that Eircom is required, pursuant to the 2018 Decision to provide access to upstream WLA services on a national basis (although take-up by Access Seekers is by no means uniform on a national basis), as well as access to WCA inputs in the 2018 Regional WCA Market (with such regulated access potentially being further reduced to the Revised Regional WCA Market only).

¹⁰²

https://www.eir.ie/opencms/export/sites/default/.content/pdf/IR/presentations/2020_2021/eir_Q4_FY21_results_presentation.pdf

¹⁰³ Eircom has recently announced plans to upgrade a further 200,000 premises to FTTH.
<https://www.eir.ie/pressroom/eirs-Gigabit-Fibre-network-to-expand-to-a-further-200000-homes-and-businesses/>

¹⁰⁴ While the NBI rollout consists of c.544,000 premises, this amounts to only [REDACTED] coordinates. This difference arises from situations where there are multiple units at a coordinate (e.g. apartment, office block), or where a building is both a business and a residential premises (e.g. B&B).

- 4.41 In this regard, Step 2 Criterion 4A of the geographic assessment exercise specifically addresses the role of alternative network rollout in describing competitive conditions at an EA, and assesses whether, at an EA, an alternative network has rolled out to at least 30% of premises. Accordingly, those EAs where such alternative network rollout has already occurred to a non-trivial degree are (where other criteria are also satisfied or benefit from an exemption) assigned to the Revised Urban WCA Market, having passed Criterion 4A. This suggests that barriers to entry are lower in EAs falling within the Revised Urban WCA Market, including at the Reassigned EAs.
- 4.42 ComReg examines WCA network replicability under the following headings:
- (a) In the context of the infrastructure required to supply WCA;
 - (b) Whether that infrastructure is exclusively or overwhelmingly under the control of a single SP; and
 - (c) Whether there are high and non-transitory barriers associated with replacing that infrastructure.

Infrastructure required to enter the WCA market

- 4.43 Entry to the Revised Relevant WCA Markets (and the Reassigned EAs, in particular) is dependent on an SP either having wholesale access to third party network infrastructure, or building its own network capable of delivering WCA. WCA can be delivered over both FNA and NG broadband infrastructure (although in practice, SPs other than Eircom only tend to do so via NG broadband infrastructure). Eircom currently offers FNA WCA nationally, in accordance with its existing SMP regulatory obligations on the 2018 Regional WCA Market and on a commercial basis on the 2018 Urban WCA Market. Eircom also offers NG WCA based Bitstream where it has rolled out its FTTx network. As the largest provider of WCA, Eircom enjoys control of ubiquitous network infrastructure in the Revised Relevant WCA Markets that has not been replicated by other SPs at the same level of coverage. Eircom benefits from its network coverage, the size of its retail and wholesale subscriber base, and a broad product portfolio. This gives it the ability to exploit greater economies of scale and scope in the provision of WCA than is likely achievable by existing and potential WCA competitors.

- 4.44 Nevertheless, while Eircom provides WCA on a national basis, ComReg considers that it is not necessary for an SP to fully replicate Eircom's WCA network in order for actual or potential effective competition to arise in the Revised Urban WCA Market, or in the Reassigned EAs in particular. In this respect, ComReg notes that there is evidence of demand for wholesale inputs that can be used for WCA over networks with sub-national coverage but having a certain scale (e.g. BT and Vodafone purchase WLA from Eircom, but also purchase WLA from SIRO – whose coverage is at a sub-national level). BT relies on its purchases of WLA from both SIRO and Eircom to provide downstream WCA services, while Vodafone does so for its own retail self-supply. The effectiveness of any competitive constraint will depend, amongst other things, on the extent to which an existing competitor or potential entrant replicates Eircom's network in an area. Accordingly, *ceteris paribus*, the greater the network coverage, the more likely it is that WCA delivered over that network will have the potential to show that barriers to entry can be, or have been, overcome, or the propensity for a market to tend towards effective competition (and thus exert a more effective competitive constraint).
- 4.45 WCA can be provided either by deploying new network infrastructure, or by purchasing upstream WLA inputs (on either a regulated basis from Eircom or a non-regulated basis from SIRO and, on a forward-looking basis, from NBI).
- 4.46 ComReg notes that, in the footprint of the Reassigned EAs, other SPs have replicated Eircom network rollout to a limited degree and individual alternative network coverage exceeds 60% in less than a quarter [X ■ X] of the Reassigned EAs. Once NBI rollout commences and reaches a reasonable coverage level (on the basis of government policy and funded by State Aid, rather than on a commercial basis), there is likely to be some replication of Eircom's FNA network footprint in those parts of the Reassigned EAs coterminous with the IA (although ComReg notes that NBI's network is being rolled out to premises that do not have NG broadband so it will not necessarily result in replication). Other SPs – specifically, SIRO and Virgin Media, as well as Eircom itself – have engaged in NG broadband network rollout which partially replicates Eircom's FNA and NG Broadband networks. This suggests that, in the Reassigned EAs, SPs have rolled out infrastructure which can be used to enter the Revised Urban WCA Market on a commercial basis, to a greater degree than in the Revised Regional WCA Market. As noted above, both BT and Vodafone also, through having commercial and regulated access to upstream WLA inputs also have an effective network footprint, to varying degrees of coverage in the Reassigned EAs, thus also suggesting that barriers to entry are lower.

Whether WCA infrastructure is under the control of a single SP

- 4.47 CG WCA (CG Bitstream) is delivered over FNA infrastructure owned by Eircom, which has not been replicated by any other SP. ComReg considers it highly unlikely that an SP would roll out a competing FNA network, given the general shift away from copper. In the footprint of the Revised Urban WCA Market, Eircom’s NG broadband network has been replicated in part by two SPs (SIRO and Virgin Media). This suggests that, on the basis of the availability of upstream NG broadband inputs or self-supply, barriers to entry can be surmounted in the Revised Urban WCA Market. However, replication of Eircom’s NG broadband network is partial, and no other broadband network rivals the coverage of Eircom.
- 4.48 Such alternative infrastructure is not present to the same extent in the Revised Regional WCA Market, as Table 17 below indicates. ComReg acknowledges that NBI rollout in the Intervention Area (‘IA’) will assist in eroding such barriers.
- 4.49 BT offers a WCA product which competes with Eircom WCA on the basis of the purchase of WLA inputs from Eircom and SIRO, while SIRO and, on a forward-looking basis, NBI offer wholesale NG broadband inputs which SPs can use to offer retail broadband. Table 17 below illustrates the extent to which other SPs have replicated Eircom’s network infrastructure. Outside of each network footprint, an SP which did not operate its own network would rely on purchasing WLA from Eircom or SIRO to deliver WCA, pending NBI rollout.

Table 17: ANO coverage by geographic market, July 2021 [X REDACTED X]

Network	Coverage %				
	2018 Urban WCA Market, Q4 2017	Revised Urban WCA Market	Reassigned EAs	2018 Regional WCA Market, Q4 2017	Revised Regional WCA Market
Virgin Media ¹⁰⁵	█	█	█	█	█
SIRO ¹⁰⁶	█	█	█	█	█

¹⁰⁵ Column 1: 71-80%, Column 2: 61-70%, Column 3: 21-30%, Column 4: 0-10%, Column 5: 0-10%.

¹⁰⁶ Column 1: 0-10%, Column 2: 21-30%, Column 3: 21-30%, Column 4: 0-10%, Column 5: 0-10%.

Table 18: PO presence by geographic market, July 2021 [X REDACTED X]

PO	% PO presence at EAs, any level of EA coverage				
	2018 Urban WCA Market, Q4 2017	Revised Urban WCA Market	Reassigned EAs	2018 Regional WCA Market, Q4 2017	Revised Regional WCA Market
Eircom	██████ ¹⁰⁷	██████ ¹⁰⁸	██████ ¹⁰⁹	██████ ¹¹⁰	██████ ¹¹¹
BT	██████ ¹¹²	██████ ¹¹³	██████ ¹¹⁴	██████ ¹¹⁵	██████ ¹¹⁶
Vodafone	██████ ¹¹⁷	██████ ¹¹⁸	██████ ¹¹⁹	██████ ¹²⁰	██████ ¹²¹
Virgin Media	██████ ¹²²	██████ ¹²³	██████ ¹²⁴	██████ ¹²⁵	██████ ¹²⁶
SIRO	██████ ¹²⁷	██████ ¹²⁸	██████ ¹²⁹	██████ ¹³⁰	██████ ¹³¹

4.50 Table 17 records ANO presence, measured by premises passed in the entirety of each market segment, while Table 18 measures PO presence in each EA in a market segment, regardless of the coverage level of that PO within an EA.

¹⁰⁷ In the range of 91-100%.

¹⁰⁸ In the range of 91-100%.

¹⁰⁹ In the range of 91-100%.

¹¹⁰ In the range of 91-100%.

¹¹¹ In the range of 91-100%.

¹¹² In the range of 91-100%.

¹¹³ In the range of 91-100%.

¹¹⁴ In the range of 91-100%.

¹¹⁵ In the range of 41-50%.

¹¹⁶ In the range of 41-50%.

¹¹⁷ In the range of 81-90%.

¹¹⁸ In the range of 91-100%.

¹¹⁹ In the range of 91-100%.

¹²⁰ In the range of 61-70%.

¹²¹ In the range of 71-80%.

¹²² In the range of 81-90%.

¹²³ In the range of 61-70%.

¹²⁴ In the range of 21-30%.

¹²⁵ In the range of 0-10%.

4.51 Eircom is present at all 81 Reassigned EAs. At least one other NG broadband network is interconnected at [REDACTED].¹³² This suggests that NG broadband network infrastructure capable of acting as an input to delivering WCA by an SP (either for self-supply or merchant market supply) is confined to the Revised Urban WCA Market. In respect of the Reassigned EAs, Eircom is the sole NG broadband network present at [REDACTED] **EIRCOM:** [REDACTED]¹³³ of the Reassigned EAs.

Whether barriers to replicating WCA infrastructure are high and non-transitory

4.52 SPs have either partially replicated Eircom network rollout in the footprint of the Revised Urban WCA Market or are using upstream WLA inputs to provide merchant market WCA and/or for the supply of retail services directly. Given that replication of Eircom's FNA network is unlikely, this suggests that the costs involved in replicating Eircom's FTTx networks continue to generate high and non-transitory barriers to entry on the Revised Regional WCA Market. However, Eircom's FTTx network is being partially replicated by SIRO and NBI in the footprint of the Revised Urban WCA Markets, which suggests that barriers to replicating that infrastructure are lower in the Revised Urban WCA Market, than in the Revised Regional WCA Market, both for network operators rolling out new infrastructure, and Access Seekers who wish to offer either WCA or retail broadband using WLA inputs supplied over these networks. On a forward-looking basis, ComReg also notes that barriers to entry may decline as NBI continues its network rollout on a non-commercial basis in the Intervention Area.

4.53 The commercial/economic viability of replicating Eircom WCA network footprint is dependent on scale, and replication of Eircom's widespread FTTx network may only be commercially viable for an SP where there is sufficient demand or premises density, as is more likely to be the case in the Revised Urban WCA Market.

4.54 SPs require access to infrastructure in order to provide WCA. Potential entry into the Revised Urban WCA Market by an SP would involve one or more of the following:

- (a) Building an independent network to offer WCA;

¹²⁶ In the range of 0-10%.

¹²⁷ In the range of 21-30%.

¹²⁸ In the range of 41-50%.

¹²⁹ In the range of 21-30%.

¹³⁰ In the range of 0-10%.

¹³¹ In the range of 0-10%.

¹³² In the range of 31-40%.

¹³³ In the range of 51-60.

- (b) Adapting an existing network (or existing network access) to offer WCA;
- (c) Deploying WCA using WLA inputs provided by Eircom and SIRO (and, on a forward-looking basis, NBI).

- 4.55 Each of the above approaches would encounter different (and in some cases significant) entry barriers, and the degree to which each would be potentially effective for replicating Eircom WCA would likely vary. In this respect, ComReg assesses below whether an SP's ability to enter the Revised Urban WCA Market by means of one of the entry/expansion strategies outlined at paragraph 4.54 above would effectively constrain Eircom's behaviour in the Reassigned EAs over the period of this review (noting that the 2018 Decision already deregulated those EAs falling within the 2018 Urban WCA Market).
- 4.56 In the Revised Urban WCA Market inclusive of the Reassigned EAs, which typically encompasses more densely-premised areas, Eircom may face competition from SPs which own NG broadband networks, or use WLA inputs to provide retail broadband and (in the case of BT) WCA. However, the Revised Regional WCA Market continues to be generally characterised by insufficiently effective competitive constraints arising from lower coverage/presence of alternative NG broadband networks, as set out at Table 17 above, which indicates that, across the entirety of the Revised Regional WCA Market, alternative network coverage does not exceed 10% of premises (NBI rollout is likely to change this in the medium to long term). This finding is consistent with Step 2 geographic assessment Criterion 4A, which, *ceteris paribus*, assigns EAs to the Revised Urban WCA Market where ANO coverage exceeds 30%. Furthermore, WLA NG broadband inputs from Eircom or SIRO are not present/used to a sufficient extent in the Revised Regional WCA Market to allow SPs to compete with Eircom's WCA products.
- 4.57 ComReg recognises that it may not be necessary to fully replicate Eircom's infrastructure footprint in order for a potential entrant to pose an effective competitive constraint in the Revised Urban WCA Market. However, factors such as the extent of sunk costs, economies of scale and scope, and vertical integration are all likely to influence the extent to which Eircom WCA infrastructure is replicable, and hence the degree of competitive constraint arising from potential competition in the Revised Urban WCA Market through entry. These are considered below.

Eircom benefits from significant economies of scale, scope and density

- 4.58 Economies of scale, scope and density refer to potential advantages that larger incumbents may enjoy over smaller new entrants. Economies of scale generally refer to the cost advantage which a large-scale SP may have over a smaller SP where the marginal cost of production decreases as the quantity of output produced increases. Economies of scope refer to the potential efficiencies which may be gained by a firm jointly producing a range of goods and services, e.g. where an FTTx network can be used to provide RFTS, TV and broadband simultaneously. Economies of density refer to potential efficiencies associated with supplying customers who are geographically concentrated. A large proportion of the costs associated with building and maintaining a telecommunications network are fixed or sunk. Accordingly, the average cost per subscriber of providing WCA will fall as the number of customers served by a network increases. Economies of scale and density are, therefore, achieved where an SP can serve as many subscribers as possible from its investment in a given part of the network, e.g. an exchange.
- 4.59 Eircom provides WCA over its FNA and NG Broadband networks on both a merchant market basis and on a self-supply basis, on a commercial basis on the 2018 Urban WCA Market, and on a regulated basis on the 2018 Regional WCA Market, pursuant to the findings of the 2018 Decision. Eircom is the only network operator which offers WCA on a widespread basis capable of delivering broadband at both wholesale and retail levels, to itself and to external third parties, to both small and large End Users, and on both the Revised Urban WCA Market and the Revised Regional WCA Market. No other SP offers this level of diversification.
- 4.60 Economies of scale, scope and density in relation to the provision of WCA have to be considered in light of the retail broadband market, where the cost of supply per customer decreases in line with the number of customers supplied. Economies of scale and scope could act as a barrier to entry to the Revised Regional WCA Market because Eircom has a substantial customer base (69% market share, comprised of its self-supply of WCA to its retail subscribers and Access Seekers purchasing WCA) which exceeds that of any other SP.

4.61 ComReg notes that actual and potential competitors to Eircom in the downstream retail broadband market, such as Vodafone, Virgin Media, BT and Sky, offer a variety of retail and/or wholesale services. In the Revised Urban WCA Market, which is characterised by the greater presence of NG broadband networks capable of delivering bundled and higher-speed products, these SPs have, or have the potential to, gain benefits from economies of scale and scope by winning a significant number of retail broadband customers, including through cross-selling RFTS, TV or other products to their customers, based on EA presence data set out at Table 18 above, which indicate that four of the five POs are present at over two-thirds of EAs in the Revised Urban WCA Market. As set out in Table 19 below, this has resulted in Eircom's market share falling to [X **EIRCOM:** █████ X] of all subscriptions, Virgin Media's share increasing to [X **VMI:** █████ X], while BT and Vodafone's market share increasing to [X **BT/VODAFONE:** █████ X] respectively. However, there is insufficient evidence to conclude that current or potential retail¹³⁴ economies of scale and scope are sufficient to justify upstream commercial entry into the Revised Regional WCA Market through building a network to provide WCA (noting that BT provides WCA without engaging in extensive infrastructure investment). It may be the case that SPs will expand their purchases of WLA from Eircom and SIRO over time, where it is economic to do so. ComReg also notes at this point that, as a matter of public policy, NBI will roll out to premises in the IA which are deemed not commercially viable due, *inter alia*, to the absence of sufficient economies of scale and scope to warrant commercial rollout. In this regard, NBI is exceptional, as it is rolling out network to premises which are not characterised by economies of scale or scope but is doing so on the basis of State Aid funding, rather than a commercial decision to do so.

¹³⁴ SP retail market shares, by subscriptions are published on a quarterly basis by ComReg, in its Quarterly Key Data Report, and also on its online data portal, at <https://www.comreg.ie/industry/electronic-communications/data-portal/>

Table 19: PO Market Share in the Revised Urban WCA Market, Q1 2021 [X
REDACTED X]

Revised Urban WCA Market	Reassigned EAs
Eircom	████
Virgin Media	████
BT	████
Vodafone	████
SIRO	██
Total	100%

Economies of Scale

- 4.62 **Economies of scale** describe the cost advantages a firm benefits from as it increases its output, since its fixed costs are distributed over a higher volume of production. Eircom has incurred substantial sunk costs in the delivery of WCA, but the marginal costs of providing one more WCA connection to an Access Seeker are low. Accordingly, Eircom can disperse its sunk costs across a larger customer base (and therefore at a lower amount per customer) consisting of both self-supply of WCA to its own retail broadband subscribers, and the merchant market sale of WCA to Access Seekers, than competitors with smaller output levels. ComReg considers that Eircom is better placed to benefit from economies of scale across both the Revised Urban WCA Market and the Revised Regional WCA Market in the delivery of WCA than other SPs.
- 4.63 The following indicators suggest that economies of scale are a characteristic of relevance for consideration in the Revised Relevant WCA Markets:
- (a) Significant upfront capital costs - The provision of WCA may involve significant upfront capital costs, including costs associated with building and maintaining a network, where an SP chooses not to rely on wholesale inputs provided by another SP. As a result, the average cost of providing WCA falls per subscriber as the reach of the network increases.
 - (b) Access Seekers purchase WLA inputs capable of delivering WCA from large SPs who own and operate network assets. By doing so, Access Seekers who provide WCA and/or retail broadband can benefit from the economies of scale enjoyed by the upstream WLA network operator (and can avoid the high upfront cost of replicating network infrastructure, in cases where doing so is not considered to be commercially justifiable).

- 4.64 Eircom is likely to achieve significantly greater economies of scale in the provision of WCA, as the largest supplier of both retail broadband and WCA in the State, than other SPs. Eircom operates a ubiquitous FNA network and the State's largest FTTx network, which support the provision of retail broadband and WCA on both the Revised Urban WCA Market and the Revised Regional WCA Market. Eircom is, therefore, generally likely to face lower average and marginal costs of providing WCA, relative to other SPs.
- 4.65 BT appears to have achieved sufficient economies of scale to compete in most (but not all) of the EAs constituting the Revised Urban WCA Market by providing WCA on the basis of its purchases of Eircom WLA and WCA and SIRO WLA. Similarly, Vodafone self-supplies WCA using upstream WLA inputs and Virgin Media self-supply over its network, predominantly in the footprint of the Revised Urban WCA Market, which suggests that they have also achieved sufficient scale to compete in most, but not all, EAs in the Revised Urban WCA Market.
- 4.66 ComReg considers that economies of scale are likely to pose high and non-transitory barriers to entry in the Revised Regional WCA Market, but not necessarily in the Revised Urban WCA Market, including the Reassigned EAs, which have been characterised by greater levels of entry by other SPs, (as set out at Table 17 and Table 18 above) which allows Access Seekers to achieve the benefits of lower economies of scale by means of access to WLA, including VUA delivered over NG broadband. On the Revised Regional WCA Market, the degree of replication of network infrastructure capable of delivering WCA to date indicates that other SPs have had limited success in achieving economies of scale commensurate with those achieved by Eircom.

Economies of Scope

- 4.67 **Economies of scope** describe the reduction in costs arising from producing two or more distinct products, compared to the costs of producing those products separately. As the only operator of separate FNA and broadband networks, Eircom suffers some diseconomies of scope, compared to SPs who operate a broadband network only, such as Virgin Media, SIRO, or – on a forward-looking basis - NBI. However, these diseconomies of scope may reduce over time as Eircom decommissions its FNA network.

- 4.68 It is not necessarily clear that Eircom is better placed than other SPs to benefit from economies of scope in the provision of WCA. In order to compete with Eircom in the supply of WCA, a new entrant would likely need to provide wholesale NG broadband access (on a merchant market or self-supply basis) of similar quality to that provided by Eircom. This would also allow Access Seekers to provide retail broadband bundled with other retail services, such as RFTS or TV. This appears to be largely met on the Revised Urban WCA Market (including the Reassigned EAs), insofar as SIRO and Virgin Media operate broadband networks which deliver access of similar quality to that of Eircom FTTx, as set out at Table 17 above. The comparative absence of these POs from the Revised Regional WCA Market (or their presence, but at a level which is unlikely to generate an effective competitive constraint) indicates that insufficient wholesale NG broadband access (on a merchant market or self-supply basis) is available, although future NBI rollout in the IA may impact this in the medium to long term.
- 4.69 Economies of scope are also evident in that WCA often provides an input to a retail bundle, and networks used to supply such WCA typically support a range of wholesale and retail services. Economies of scope could represent an entry barrier if a potential entrant into the Revised Regional WCA Market were required to offer a range of wholesale and retail services in order to compete effectively in the provision of WCA, thus potentially increasing the costs associated with entry.

Economies of Density

- 4.70 **Economies of density** refer to efficiencies arising from supplying customers who are geographically concentrated. The uneven (existing and planned) deployment of NG broadband networks capable of delivering WCA or retail broadband suggests the presence of economies of density in the Revised Urban WCA Market, and the comparative absence of such economies of density in the Revised Regional WCA Market. Virgin Media and SIRO have both concentrated their network rollout in areas of higher premises density in the Revised Urban WCA Market, while NBI will service areas of lower premises density, largely in the Revised Regional WCA Market on a non-commercial basis (and in the presence of State Aid), due to commercial decisions taken by other SPs not to incur the costs of network rollout to those areas.

- 4.71 Eircom's FNA network has ubiquitous coverage, while its FTTx network has a substantial presence across the Revised Relevant WA Markets, passing approximately 84% of premises as of Q2 2021.¹³⁵ ComReg is of the view that Eircom benefits from its extensive network rollout, relative to SPs who have concentrated network rollout in areas of higher population density, and that this may lead to barriers to entry and/or expansion. Eircom's network has, aside from greenfield developments, been in place for many decades, and the costs of servicing its comparatively widespread network are predominantly related to maintenance, repair and upgrade, rather than initial network rollout. Thus, Eircom does not face the same level of initial rollout costs as other SPs engaged in network rollout, since poles, ducts, cabinets and so on are generally already in place.¹³⁶
- 4.72 Eircom's network reach appears to allow it to profitably serve premises at lower levels of density than other SPs. For example, in April 2017, Eircom agreed with the Department of Communications, Climate Action, and Energy¹³⁷ to provide NG broadband on a commercial basis to 300,575 premises (the 'Rural 340k' – Eircom subsequently added another 40,000 premises to the initial 300,000 premises) which had originally been included in the NBP IA on the basis that it was not commercially attractive to offer high-speed broadband to these premises. This suggests that Eircom was capable of profitably rolling out a NG network to areas characterised by low premises density which had initially been included in the IA on the grounds that they would not be commercially served by NG Broadband. Eircom is also increasing its FTTP footprint beyond the initial Rural 340k premises. This indicates that Eircom may be in a position to benefit from economies of density at a lower level of density than other SPs.

¹³⁵

https://www.eir.ie/opencms/export/sites/default/.content/pdf/IR/presentations/2020_2021/eir_Q4_FY21_results_presentation.pdf noting that Eircom applies a new FTTH reporting mythology as of September 2021, as described at footnote 74 above.

¹³⁶ ComReg also notes that, compared to a greenfield entrant, SIRO likely faces a lower level of rollout costs, due to its use of ESB's electricity distribution network. However, compared to Eircom, SIRO must incur additional costs associated with, for instance, ensuring that both telecoms and electricity infrastructure are safely deployed on the same poles and cables.

¹³⁷ <https://www.dccae.gov.ie/documents/Commitment%20Agreement.pdf>

- 4.73 ComReg therefore concludes that both Eircom and other SPs are capable of benefitting from economies of density in the footprint of the Revised Urban WCA Market. However, due to the ubiquity of its network (and the associated lower cost of upgrading that network, compared to rolling it out *de novo*), over the period of this review Eircom has a greater capacity to benefit from economies of density in the footprint of the Revised Regional WCA Market than SPs who face rollout costs which Eircom can avoid, and which are more constrained in investing in network rollout only for WCA in areas with sufficiently high premises density (i.e. the Revised Urban WCA Market). Economies of density likely create a sufficient barrier to entry to the Revised Regional WCA Market by restricting profitable entry to geographic areas characterised by a sufficiently high level of density.
- 4.74 Economies of density are evident from the uneven deployment of competing networks across Ireland. SIRO's FTTP network and Virgin Media's CATV network have sub-national footprints, predominantly in areas with higher premises density, as set out at Table 17 and Table 18, largely in the Revised Urban WCA Market.
- 4.75 The economies of density are likely to be challenging in the Revised Regional WCA Market, which include substantial semi-urban and rural areas characterised by lower population density. This lower density increases the average cost of network rollout, evidenced by the comparative lack of NG broadband networks capable of providing services on a commercial basis in these areas.
- 4.76 Overall, there is evidence to suggest that economies of scale, scope, and density are factors that are relevant for consideration in the Revised Regional WCA Market. Eircom has benefited from its economies of scale, scope and density in the provision of WCA. These economies are likely to result in high barriers to entry for other SPs who may seek to enter the Revised Regional WCA Market.

Conclusion on economies of scale, scope and density

- 4.77 Overall, this suggests that Eircom's capacity to benefit from economies of scale, scope and density, compared to SPs is not uniform, and varies between the Revised Urban WCA Market on the one hand and the Revised Regional WCA Market on the other. The analysis set out above suggests that, on the Revised Regional WCA Market, Eircom benefits from economies of scale, scope and density to a greater extent than other POs. This suggests that Eircom is more likely to benefit from economies of scale, scope and density on the Revised Regional WCA Market than on the Revised Urban WCA Market, given the greater presence of other POs on the Revised Urban WCA Market, and the fact that ComReg has already deregulated the 2018 Urban WCA Market on the basis that economies of scale, scope and density did not amount to high and non-transitory barriers to entry.

4.78 ComReg accordingly considers that there is sufficient evidence to suggest that economies of scale, scope, and density giving rise to high and non-transitory barriers to entry in the Revised Urban WCA Market have been sufficiently overcome, as demonstrated by the presence of other POs at non-trivial coverage levels, as set out at Table 22 above, on the Revised Urban WCA Market. With respect to the Revised Regional WCA Market, which is characterised by comparatively lower levels of PO presence aside from Eircom, ComReg concludes that lower levels of premises and population density give rise to economies of scale, scope and density which are capable of generating barriers to entry, due to the costs associated with providing WCA service to premises in the Revised Regional WCA Market which Eircom does not necessarily face, but which other POs appear to face to a greater degree. This is suggested by the lower levels of coverage by POs other than Eircom, as set out at Table 17 and Table 18.

Entering the Revised Urban WCA Market (including the Reassigned EAs) incurs considerable sunk costs

- 4.79 Sunk costs are costs that are incurred, but that cannot be recovered, if an entrant decides to, or is forced to, exit the market. The existence of sunk costs does not automatically imply that entry barriers are high. In fact, a certain level of sunk costs will be involved in entering most markets, and Eircom may also have had to incur a similar level of sunk costs before it entered the Revised Relevant WCA Markets (although the risks of non-recovery faced by Eircom would have been lower, given its 100% market share at the time).
- 4.80 Sunk costs arise particularly where assets are specialised and cannot readily be diverted to other uses. These assets are therefore difficult or impossible to re-sell. Sunk costs include investments in equipment which can only produce a specific product, the development of products for specific customers, and product installation and labour costs, including opening up the ground and installing ducting, cables, and associated infrastructure.
- 4.81 Sunk costs accordingly create particularly high risks for new entrants, as the value of these sunk costs cannot easily be recouped, for instance by resale, should the entrant subsequently decide to exit the market (or is forced from the market). Entering the Revised Relevant WCA Markets by means of network rollout is likely to generate a level of sunk costs which a new entrant would find difficult, if not impossible, to recover.

- 4.82 In some circumstances, it is more difficult for new entrants to break into a market than it was for the first firm (or subsequent firms) to enter – the ‘first mover advantage’. Such circumstances create a decisional asymmetry, where an incumbent has already incurred and recovered its sunk costs, but a new entrant has not. In general, higher sunk costs tend to have a greater dissuasive effect on market entry.¹³⁸
- 4.83 Sunk costs therefore raise the barriers to entry, and may also increase the incumbent’s commitment to signal to the market its willingness to respond aggressively to entry, in order to ensure that it recoups its own sunk costs. It should also be noted that sunk costs create barriers to exit, as the firm incurring those costs cannot easily recover them by diverting the infrastructure to alternative uses. The knowledge that sunk costs represent a barrier to market exit may therefore raise barriers to entry.
- 4.84 ComReg considers that sunk costs are likely to be incurred when entering both the Revised Regional WCA Market and the Revised Urban WCA Market, for the following reasons, where an entrant proposes to invest in rolling out WCA infrastructure:
- (a) Market entry involves significant upfront capital investment;
 - (b) Eircom has already incurred sunk costs, and is likely to have already achieved economies of scale in the provision of WCA. This could create commercial uncertainty surrounding investment in WCA infrastructure; and
 - (c) Particularly in the case of its FNA network, a significant portion of the sunk costs initially incurred by Eircom in network rollout capable of delivering WCA are already likely to be amortised.
- 4.85 However, the magnitude of these sunk costs is more likely to raise barriers to entry in the Revised Regional WCA Market than the Revised Urban WCA Market, given the evidence which shows greater NG broadband network presence in EAs falling within the footprint of the Revised Urban WCA Market, which suggests that at least some SPs have overcome the potential barriers to entry posed by sunk costs.

¹³⁸ OECD, Barriers to Entry, (DAF/COMP(2005)42), 2006, Paris.

Whether sunk costs are the same for all entrants

- 4.86 Eircom operates a ubiquitous FNA network that supports the provision of the WCA focal product on a national basis. A significant proportion of the sunk costs incurred in the construction of that network (including the associated duct, pole and other assets) is likely to be amortised by now. In rolling out its FTTx¹³⁹ network, Eircom is also likely to incur additional sunk costs.¹⁴⁰ In contrast, any new entrant would likely face higher sunk costs than those faced by Eircom, given its existing network, including the recent FTTx upgrades, although ComReg notes that SPs other than Eircom would likely face similar sunk costs on their FTTP networks.
- 4.87 The level of sunk costs associated with entry into the Revised Relevant WCA Markets depends, *inter alia*, on an SP's presence in related telecommunications markets. In the case of an entrant with no retail broadband customers, and no existing WCA infrastructure, the cost of entry is likely to be substantial, and the sunk cost element of the overall costs is also likely to be significant. However, sunk costs can be mitigated where the entrant:
- (a) Has a significant presence on the retail broadband market, and can achieve economies of scale independently of the Revised Relevant WCA Markets;
 - (b) Already has network infrastructure in place, and can assign capacity on that network to the provision of WCA or retail broadband; or
 - (c) Enters the Revised Relevant WCA Markets by purchasing WLA inputs to offer WCA, or retail broadband on a self-supply basis to its own End Users.
- 4.88 An entrant falling under category (a) above is likely to face lower sunk costs, and lower risks arising from investing in a WCA network, because the investment in infrastructure is being used to provide both WCA and retail broadband (and, potentially, other services, such as RFTS or TV, in the case of broadband network rollout). Accordingly, a smaller proportion of the cost of investment is at risk arising from potential uncertainty around WCA market conditions.
- 4.89 An entrant falling under category (b) above faces lower costs of entry to the Revised Relevant WCA Markets associated with relatively less risky capital investment. The sunk costs associated with entry to the Revised Relevant WCA Markets are likely to be lowest for SPs that fall under categories (a) and (b).

¹³⁹ Eircom provides retail and wholesale services over its FNA and broadband networks.

¹⁴⁰ Eircom's FTTx deployment re-utilises existing assets such as ducts, trenches, poles and exchanges.

4.90 An entrant falling under category (c) above may avoid incurring sunk costs where it enters the Revised Relevant WCA Markets by purchasing WLA inputs. However, this possibility only arises where some other SP has incurred the sunk costs of rolling out a network. Accordingly, where an SP intends to avoid sunk costs by purchasing WLA inputs, it can only do so where an SP has successfully overcome the barrier to entry posed by sunk costs. Thus, sunk costs may generate barriers to entry, even where SPs do not propose to roll out their own network infrastructure, because they are reliant on SPs in either of categories (a) or (b) above overcoming these sunk costs.

Do sunk costs represent a barrier to entry to the Reassigned EAs?

4.91 Network rollout is a resource-intensive exercise, which is characterised by long time horizons and substantial sunk costs. As the level of sunk costs increases, market entry becomes, *ceteris paribus*, less likely, as an SP must satisfy itself that it is likely to recoup its sunk costs of investment within a given timeframe.

4.92 Given moves away from FNA towards NG broadband technology, it is a reasonable assumption that a hypothetical new entrant would offer WCA over NG broadband rather than FNA. An FTTx network is capable, in principle, of delivering multiple functionalities at both wholesale and retail level, including, but not limited to, WCA, retail broadband, and also RFTS, FACO, WLA, and IPTV.

4.93 A new entrant providing wholesale NG broadband inputs which could be used for the delivery of WCA or retail broadband would need to invest in network and/or interconnection infrastructure. This means that, in the case of an SP which rolled out its own network, the sunk costs of investing in an FTTx network would likely be incurred in the expectation of delivering multiple services, including those listed at paragraph 4.92 above, rather than just WCA. Therefore, a new entrant would likely expect to recoup those sunk costs of network rollout by facilitating the delivery of a range of electronic communications services.

4.94 ComReg considers that a new entrant would likely incur substantial sunk costs entering the Revised Regional WCA Market, arising from network rollout, due to the need to acquire the necessary cabling and associated infrastructure, the labour and capital costs of network rollout, and the costs of acquiring the necessary licensing and property rights which entitle the new entrant to roll network out over both public and private property. These are costs which a new entrant is unlikely to be able to recover if it exits the market, and which incumbents have already started to recoup.

- 4.95 By contrast, Eircom’s network consists of substantial legacy asset components which support the nationwide provision of WCA. A significant proportion of the sunk costs incurred in the construction of Eircom’s legacy FNA network is likely to be largely amortised by now, although ComReg recognises that Eircom is likely to incur¹⁴¹ additional sunk costs arising from the upgrade of its network to FTTx. However, given Eircom’s large wholesale and retail customer base, and its reusable assets, it faces a greater degree of certainty in recovering its network upgrade costs relative to SPs with lower customer numbers, albeit having regard to the number of other competing networks that are present. Nonetheless, in ComReg’s view, the sunk costs associated with *de novo* network rollout faced by a new entrant would likely be more substantial, and would take longer to recover, than the sunk costs faced by Eircom in upgrading its existing network. Similarly, ComReg recognises that SIRO is capable of relying on substantial legacy ESB assets which may support the provision of WCA. However, for the reasons set out at footnote 136 above, ComReg considers that SIRO is nevertheless likely to incur greater sunk costs than Eircom, due to the need to accommodate both electricity and telecommunications infrastructure on the same legacy assets.
- 4.96 In practice, while sunk costs arise in the provision of WCA, these have not prevented some replication in the rollout of NG broadband networks capable of delivering WCA in the Revised Urban WCA Market, noting that such networks capable of delivering WCA are also capable of delivering other services. Moreover, where an SP wishes to enter the Revised Relevant WCA Markets (as BT has done) by purchasing wholesale NG broadband inputs from other SPs, that SP incurs no sunk costs in respect of fixed access (which are incurred by the network owner).
- 4.97 ComReg considers that entry by POs to the Reassigned EAs provides evidence that sunk costs do not seem to be a sufficient factor to undermine entry and/or expansion in the Reassigned EAs, as set out at Table 20 below.

Table 20: PO entry to the Reassigned EAs, as of Q1 2021 [X REDACTED X]

PO	Reassigned EA presence	% of Reassigned EAs	Average coverage	
			Reassigned EAs where present ¹⁴²	All Reassigned EAs ¹⁴³
Eircom	[X ■]	■	■	■
SIRO	■	■	■	■
BT	■	■	■	■
Virgin Media	■	■	■	■
Vodafone	■	■	■ ■	■

¹⁴¹ Eircom’s FTTx deployment utilises some existing assets, including ducts, trenches, and poles.

¹⁴² Where present – coverage is not counted at EAs where the PO is not present.

¹⁴³ Coverage is calculated in all EAs, taking account of those EAs where the PO is not present.

4.98 There are a number of possible means of entering the Revised Relevant WCA Markets, each of which carry different levels of sunk costs dependent, *inter alia*, on the extent to which the potential entrant already has infrastructure in place that can be harnessed to provide WCA, as set out below.

Revised Relevant WCA Market entry option 1: Build an independent network

4.99 Building a new independent network requires very significant financial and time investment, as exemplified by, for instance, SIRO or, on a forward-looking basis, NBI. Entry into the WCA markets would therefore likely involve significant costs of network deployment which would be largely sunk (although, as indicated above, these costs could be recovered across the provision of multiple services).

4.100 Building an independent network to provide WCA would require significant investment. Even if a potential entrant did not fully replicate Eircom's network, the extent of geographic coverage is likely, in ComReg's view, to be an important factor for Access Seekers. Thus, a trade-off arises between a limited network rollout which would generate lower sunk costs and a potentially lower base of Access Seekers, and a larger network rollout which would likely involve higher sunk costs, but a potentially higher base of Access Seekers. A more extensive network would, all other things being equal, also potentially have a greater impact on competition in the provision of retail broadband. Therefore, entry into the Revised Relevant WCA Markets is likely to involve significant costs which would be largely sunk and, relative to an existing WCA SP, an entrant faces an increased risk of non-recovery of sunk costs.

4.101 In order to overcome the posited barrier to entry, it may not be necessary for an alternative SP to entirely replicate Eircom's WCA coverage footprint. However, ComReg notes that the main SPs compete in the provision of retail broadband at a national level and, in this respect, the geographic coverage of a hypothetical alternative WCA product is likely to be an important feature for Access Seekers. Therefore, while a more extensive infrastructure deployment would have the potential to lower barriers to entry in the Revised Relevant WCA Markets, so too would it incur higher sunk costs which would deter expansion.

4.102 Prospectively, Eircom will face a greater level of competition in the Revised Regional WCA Market over time as NBI rolls out to the IA. However, as set out at Section 3 above, ComReg does not currently consider that NBI is capable of generating an effective competitive constraint on Eircom.

4.103 ComReg considers that the sunk costs faced by a new entrant considering building an independent network to provide WCA would be far in excess of the sunk costs faced by Eircom, and would likely amount to a significant barrier to entry.

- 4.104 ComReg further considers that, where a new entrant builds an independent network to offer wholesale NG broadband access which an Access Seeker could purchase in order to offer WCA or retail broadband, that new entrant is still likely to incur substantial sunk costs. The evidence available to ComReg suggests that these sunk costs are not, however, insurmountable barriers to entry. In particular, ComReg notes that both SIRO and Virgin Media have rolled out independent networks in the footprint of the Revised Urban WCA Market, which are capable of providing WCA and/or retail broadband on a merchant market or self-supply basis.
- 4.105 However, entry through the construction of an independent network on a commercial basis is unlikely to occur on the Revised Regional WCA Market over the period of this market review to a sufficient extent, such that it would suggest that barriers to entry are no longer high and non-transitory. Furthermore, it is ComReg's view that further entry into the Revised Regional WCA Market based on new network build is unlikely to effectively constrain Eircom over the lifetime of this market review, while noting that, in areas where it has rolled out, NBI has the potential to generate such a constraint at local level.

Revised Relevant WCA Market entry option 2: Adapt an existing network to provide WCA

- 4.106 ComReg has considered the extent to which potential entry in the Revised Relevant WCA Markets by an existing vertically-integrated retail broadband provider, or an existing network operator, would be likely to occur over the period of this market review to such an extent as to effectively constrain Eircom.
- 4.107 Barriers to entry to the Revised Regional WCA Market may be lessened, in part, if a potential entrant has an existing network that is used to provide other services, and could be leveraged to also provide WCA services.
- 4.108 The sunk costs involved in entering the Revised Relevant WCA Markets may be lower where the new entrant has an existing network in place (as set out at Table 17 above). On the Revised Urban WCA Market, Virgin Media already self-supplies retail broadband over its DOCSIS 3.0/3.1 CATV network, and would potentially be able to avoid some of the sunk costs that would otherwise be incurred by SPs entering the WCA Markets. However, on the Revised Regional WCA Market, in addition to these costs, Virgin Media would also have to incur the costs of new network rollout in EAs where it is not already present.
- 4.109 Nevertheless, even on the Revised Urban WCA Market, Virgin Media would likely still incur an unavoidable level of sunk costs associated with, for instance, wholesale billing systems and interconnection capability. The likely level of demand from Access Seekers for WCA delivered over a CATV network with non-national coverage levels would also be a relevant factor for Virgin Media to consider when assessing its capacity to recover its sunk costs. It is also unclear whether existing purchasers of WCA services from both Eircom and BT would have demand for WCA services that may be offered by Virgin Media, particularly where it does not offer incremental levels of WCA coverage for existing WCA purchasers.

- 4.110 Similarly, on the Revised Urban WCA Market, SIRO sells wholesale WLA services (VUA) to Access Seekers, and would potentially be able to avoid some of the sunk costs that would otherwise be incurred by SPs entering the WCA Markets.¹⁴⁴ In this regard, the 2018 Decision included SIRO in the Relevant WCA Product Market as a supply-side substitute, on the grounds that its existing provision of WLA meant that it would likely be capable of entering the WCA market in the short term, and without incurring substantial sunk costs.
- 4.111 Furthermore, an entrant using an existing retail broadband network would still be likely to incur other sunk costs associated with developing and marketing a wholesale product and putting in place the necessary order handling, product management and billing systems. There may also be other sunk costs associated with reconfiguration of the network and points of interconnection with wholesale customers to accommodate entry in the Revised Relevant WCA Markets.
- 4.112 Relative to a greenfield entrant, an SP which already operates a network, either on a wholesale-only basis, or for the purposes of self-supply, seeking to enter the Revised Relevant WCA Markets could face reduced sunk costs, particularly relating to the upfront civil costs involved in building a network.¹⁴⁵ An existing retail broadband SP also has an existing customer base over which it may, through cross-selling, better recover entry costs, and may be better placed to achieve economies of scale, scope, and density, relative to a new build greenfield entrant.
- 4.113 ComReg is accordingly of the view that a new entrant considering adapting an existing network to provide WCA would likely face significant sunk costs relative to the impact on the cost profile faced by Eircom, thereby amounting to a sufficient barrier to entry. Accordingly, entry option 2 is unlikely to eventuate on either the Revised Urban WCA Market or the Revised Regional WCA Market.

Reassigned EAs Market entry option 3: Use WLA inputs

- 4.114 Eircom sells wholesale broadband inputs to Access Seekers on a regulated basis on the (national) WLA market. Similarly, SIRO sells VUA on a commercial basis within its network footprint. Lastly, NBI network rollout within the IA commenced in January 2021, and will, over the course of its scheduled rollout programme, provide NG Broadband to those premises (largely located in the footprint of the Regional WCA Market) not already, nor likely to be, served by NG Broadband on a commercial basis. NBI will make available WLA products to Access Seekers. An Access Seeker could potentially use WLA inputs to provide WCA or to self-supply retail broadband, and certain SPs already do so.

¹⁴⁴ SIRO has not expressed any interest in entering the Revised Relevant WCA Markets.

¹⁴⁵ Arising from the geographic criteria set out at Section 3 above, it is more likely that such an SP would be present in the footprint of the Revised Urban WCA Market, than the Revised Regional WCA Market.

- 4.115 In this scenario, a potential entrant could purchase LLU, Line Share, or VUA, thereby avoiding some of the sunk costs associated with CEI and network deployment. However, LLU usage is in decline. According to ComReg's Quarterly Key Data Report, a total of 15,591 full or shared LLU lines are active as of Q1 2021. This amounts to 7% of all WLA lines, and is a decline of 50% since the publication of the 2018 Decision in Q4 2018, when the QKDR recorded 30,517 full or shared LLU lines. However, other sunk costs are likely to be involved, such as the need to update billing and order management systems, or the need to bulk migrate.
- 4.116 ComReg notes that there has been significant growth since the publication of the 2018 Decision in the provision of retail broadband by means of wholesale NG broadband inputs (that is, excluding Virgin Media self-supply over its own CATV network), with wholesale VDSL Bitstream lines increasing nationally by 14%, while the provision of VUA lines increased by 4% between Q4 2018 and Q1 2021, according to ComReg QKDR data. This growth in the delivery of retail broadband using wholesale NG broadband inputs indicates that, where NGA infrastructure is available – that is, predominantly in the footprint of the Revised Urban WCA Market – SPs have been able to overcome the sunk cost barrier to entry.
- 4.117 In contrast, in the footprint of the Revised Regional WCA Market, where NG infrastructure is not available to the same extent (pending NBI rollout in the IA), the incidence of provision of retail broadband by means of NG Broadband infrastructure is much lower.¹⁴⁶ A purchaser of WLA NG broadband inputs is accordingly unlikely to be able to enter the Revised Regional WCA Market by way of generating an indirect retail constraint. As set out in Section 3, ComReg is aware that a limited level of such market entry has occurred on the Revised Urban WCA Market. However, SP self-supply by means of WLA NG broadband inputs could, over the lifetime of this review, exercise a sufficient indirect constraint on Eircom in the Revised Urban WCA Market. The Revised Regional WCA Market is characterised by the comparative absence (or the presence, but at a level which is insufficient to generate an effective competitive constraint) of such NGA networks. In the absence of such networks, an Access Seeker cannot enter the Revised Regional WCA Market based on WLA NG broadband inputs (pending NBI rollout).
- 4.118 ComReg considers that the sunk costs faced by a new entrant considering using WLA inputs to provide WCA may exceed the sunk costs faced by Eircom, and, in principle, create a significant barrier to entry. However, given the availability of WLA on the Revised Urban WCA Market, ComReg considers that some SPs have been able to overcome this barrier to entry, principally by offering retail broadband on a self-supply basis using VUA inputs. In contrast, given the comparatively lower incidence, or absence of, NGA networks on the Revised Regional WCA Market, there is still a significant barrier to market entry by means of the purchase of VUA.

¹⁴⁶ As of Q1 2021, 69% (959,577) of retail broadband subscriptions were in the footprint of the Revised Urban WCA Market, and 31% (438,482) were in the footprint of the Revised Regional WCA Market.

- 4.119 ComReg's view is that entry to, and expansion in, the Revised Regional WCA Market (including self-supply) would involve considerable sunk costs for SPs that do not already own a network. They constitute a lesser, but still significant, barrier to entry for an SP which has an access network but not the elements required to offer WCA and/or for an SP that already rents FNA from Eircom and does not have the potential to launch retail broadband over FNA lines, given lower NGA network rollout in the footprint of the Revised Regional WCA Market.
- 4.120 Accordingly, ComReg's view is that commercial entry to, and expansion in, the Revised Relevant WCA Markets would involve considerable sunk costs for SPs that do not already own a network capable of delivering WCA. Sunk costs constitute a lesser, but still significant, barrier to entry for SPs which operate an access network, but do not offer WCA, or for SPs which purchase WLA inputs from Eircom or SIRO, and could potentially launch a retail broadband service using those inputs.
- 4.121 The evidence available to ComReg suggests that these sunk costs create sufficiently high barriers to entry on the Revised Regional WCA Market, such that NG broadband network rollout is contemplated (by NBI) on a non-commercial basis only. In contrast, the presence of NG broadband networks (SIRO and Virgin Media) capable of delivering inputs to WCA and/or retail broadband on a merchant market and/or self-supply basis on the Revised Urban WCA Market suggests that SPs have overcome the barriers to entry generated by sunk costs on those markets.

Eircom benefits from being vertically-integrated

- 4.122 A vertically-integrated SP may generate significant efficiencies arising from its presence in upstream and downstream markets which are not available to SPs who are not vertically-integrated. In principle, these efficiencies can be passed on to End Users in the form of more competitive prices, lower transaction costs, or enhanced product quality. However, vertical integration may create a barrier to entry where an SP's presence at multiple levels of the supply chain raises the costs of new entry, for example, where prospective new entrants perceive the need to enter multiple markets simultaneously to pose a viable competitive constraint on the vertically-integrated SP. A vertically-integrated SP may also face greater opportunities and incentives to foreclose competition at one or more levels in the value chain. It may not even be necessary for a vertically-integrated SP to actually engage in such discriminatory behaviour; the threat of such behaviour occurring may suffice to act as a disincentive to new market entry.
- 4.123 Eircom accordingly accounts at least 69% of WCA in the Revised Regional WCA Market, and is also a significant provider of retail broadband in the footprint of that market. In comparison, Eircom accounts for 43% of WCA in the Reassigned EAs, and 30% of the Revised Urban WCA Market, as of Q1 2021.

- 4.124 Eircom's customer base in the retail broadband market is likely to facilitate its ability to consolidate its market power in the Revised Regional WCA Market. As a supplier of both WCA and retail broadband, Eircom also faces an incentive to raise the costs of its SP rivals supplying retail broadband (in a MGA scenario) by, for example, applying a margin/price squeeze between these prices (or, indeed, refusing access to WCA) and, in doing so, foreclosing competition on the retail broadband market.
- 4.125 The strength of this incentive is likely to be greater on the Revised Regional WCA Market, where Access Seekers cannot easily switch to alternative service provision, given the lower incidence of alternative network presence (noting also that the usage of upstream WLA inputs is lower in this market).
- 4.126 Given the lower incidence of alternative network presence in the Revised Regional WCA Market, Eircom, through its supply of WCA and retail broadband, has, absent regulation, incentives to raise the price of WCA, thereby raising rivals' costs and potentially foreclosing retail broadband. By making its rivals less competitive, Eircom could amass a significant portion of its customers at the retail broadband level, without the need to rely on WCA revenue. Furthermore, Eircom may be able to absorb the increase in WCA costs passed on to its retail arm, if it can offset these higher costs by increasing its retail broadband base, particularly given the ease with which retail broadband customers of an Access Seeker could switch to Eircom's retail arm, given the similarities in underlying WCA infrastructure.
- 4.127 Eircom's vertically-integrated structure also mitigates the extent to which it is dependent on its WCA revenue. As such, absent regulation, Eircom could potentially seek to maximize its total profits by increasing WCA prices (or, indeed, refusing to supply WCA) and, in doing so, seek to foreclose competition in the retail broadband market.
- 4.128 Both SIRO and NBI offer – or plan to offer – services at the wholesale level only, and neither is therefore vertically-integrated. In contrast, Virgin Media self-supplies retail broadband in the footprint of the Revised Urban WCA Market using its own CATV network. However, Virgin Media does not supply WCA on a merchant market basis, and is not expected to do so over the lifetime of this market review. Moreover, Virgin Media's network footprint is substantially concentrated within the Revised Urban WCA Market, and it is not expected to enter the Revised Regional WCA Market over the remaining lifetime of this market review at any significant degree of materiality. Similarly, BT and Vodafone have a greater capacity to offer WCA or retail broadband on the Revised Relevant WCA Markets on the basis of their purchases of VUA from Eircom and/or SIRO. The Revised Urban WCA Market is characterised by greater NG broadband network presence capable of offering VUA, than the Revised Regional WCA Market. Aside from Virgin Media, only two SPs competing with Eircom on the retail broadband market have market shares in excess of 3%, as of Q1 2021 – Vodafone and Sky. Neither of these SPs is vertically-integrated, and both must procure wholesale inputs from other SPs, including Eircom, BT, and SIRO, to provide retail broadband to their End Users.

- 4.129 ComReg considers that, given the presence of both SIRO and Virgin Media on the Revised Urban WCA Market, Eircom's vertical integration is likely to be a greater barrier to entry on the Revised Regional WCA Market.
- 4.130 ComReg considers that Eircom's vertically-integrated structure is capable of creating a barrier to entry to the Revised Regional WCA Market, absent regulation. It does so by dissuading market entry due to the greater threat of the vertically-integrated SP potentially engaging in anti-competitive behaviour which would put the new entrant at a disadvantage relative to the vertically-integrated SP's wholesale or retail arms. Accordingly, a vertically-integrated SP may contribute to barriers to entry simply by refusing to grant access to its infrastructure, by delaying access or by granting access on pricing or other terms which are sufficiently disadvantageous to dissuade or prevent market entry.

Legal, regulatory and administrative barriers to entry

- 4.131 Unlike the structural barriers to entry discussed above, legal, regulatory and administrative barriers to entry are derived not from economic conditions, but rather from state or EU interventions which directly impact a firm's ability to enter a new market. Examples include legal requirements related to the necessary permissions to roll out infrastructure (e.g. planning permission for civil works, or the need to obtain rights of way to roll out a network over private property).

Legal Barriers

- 4.132 Legal barriers may be absolute where an operator is blocked from entering the market or constructive, whereby the legal barriers are insurmountable to enable a firm to compete with the incumbent. ComReg considers that, on the basis of the evidence available to it, legal obligations on SPs do not appear to be sufficiently high to generate barriers to entry to the Revised Relevant WCA Markets.

Regulatory Barriers

- 4.133 The MGA requires ComReg to conduct its analysis in a hypothetical scenario in which no regulation is present on the market under review. However, ComReg assesses regulation present on any relevant adjoining markets, to determine, *inter alia*, whether such regulation would have either a direct or indirect impact on a firm's ability to enter the Revised Relevant WCA Markets. ComReg is of the view that, on the basis of the evidence available to it, that the presence of regulation on adjoining markets (for instance, the upstream WLA market) does not appear to generate high and non-transitory regulatory barriers to entry to the Revised Relevant WCA Markets.

Administrative Barriers

- 4.134 Administrative barriers to entry generally encompass all required, relevant documentation or processes such as planning permissions, wayleaves, and other administrative hurdles which all firms must satisfy, but which may have the effect of deterring, inhibiting or slowing the process of a firm attempting to enter a new market. These types of barriers may generate a comparative advantage for SPs already active on the market who have previously secured these rights (or secured exemptions or derogations from these obligations), and therefore may not be subject to the full and formal inspections or checks required of new entrants.
- 4.135 ComReg concludes that the need to satisfy administrative criteria can generate a barrier to entry. However, on the basis of the evidence available to it, that this barrier does not appear to be significant.
- 4.136 The magnitude of any legal, regulatory or administrative requirements which an SP must satisfy does not appear to be substantial enough to be identified as a high and non-transitory barrier to entry. Moreover, there appears to be little evidence that any such requirements differ substantially, either between Eircom and other SPs, or between the Revised Urban WCA Market and the Revised Regional WCA Market. In particular, where an SP is committed to investing in the provision of network infrastructure capable of delivering WCA, the barrier to entry arising from the sunk costs of infrastructure provision is likely to be much more substantial than the barriers arising from legal, regulatory or administrative requirements.

Conclusions on barriers to entry

- 4.137 ComReg has formed the view that:
- (a) The Revised Regional WCA Market is characterised by the presence of high and non-transitory structural barriers to entry;
 - (b) The Revised Urban WCA Market is not characterised by the presence of high and non-transitory structural barriers to entry; and
 - (c) Neither the Revised Regional WCA Market nor the Revised Urban WCA Market are characterised by high and non-transitory legal, regulatory, or administrative barriers to entry.
- 4.138 All three 3CT criteria must pass in order for the presumption in favour of *ex ante* regulation to be retained. In respect of the Revised Regional WCA Market, the first criterion passes. The assessment now proceeds to the second and third criteria. In respect of the Revised Urban WCA Market, the first criterion has failed. In principle, this suggests that it is not necessary to assess whether the second and third criteria pass or fail in respect of the Revised Urban WCA Market. However, for analytical completeness, ComReg proceeds to do so in respect of both the Revised Regional WCA Market and the Revised Urban WCA Market.

Criterion 2: Is the market tending towards effective competition within the relevant time horizon?

4.139 The second criterion to be assessed is whether the Revised Relevant WCA Markets are likely to tend towards effective competition over the remaining lifetime of this market review.¹⁴⁷ By definition, it is necessary to carry out the assessment of the second criterion on a dynamic and forward-looking basis.

4.140 In this respect, ComReg has examined whether:

- (a) There are observable trends towards effective competition on the Revised Regional WCA Market and the Revised Urban WCA Market (see paragraphs 4.141 to 4.149 below);
- (b) SPs are in a position to enter the Revised Regional WCA Market and the Revised Urban WCA Market, and whether this would impact on competition on those markets (see paragraphs 4.151 to 4.167 below); and
- (c) Any expected or foreseeable technological and economic developments are likely to impact on competition within the remaining period of the market review (see paragraphs 4.168 to 4.174 below).

Whether there are observable trends towards effective competition

4.141 ComReg's assessment considers levels of existing competition in the context of assessing barriers to entry, noting that the 3CT contains many of the factors considered in an SMP analysis. In this subsection, ComReg considers the relative strength of any existing competitors, market shares, and pricing, in assessing levels of existing competition. In this section, ComReg examines whether there are observable trends that are suggestive of sufficiently effective competition in the Revised Relevant WCA Markets. In particular, ComReg addresses whether Eircom's market share on the Revised Relevant WCA Markets or the downstream retail markets is in decline, and whether competing retail broadband SPs are switching to the supply of retail broadband to their own End Users on the basis of inputs other than Eircom WCA.

4.142 As set out below, these trends suggest:

- (a) A decrease in Eircom's market share in the Revised Relevant WCA Markets, corresponding with increasing market share of competing WCA SP(s);

¹⁴⁷ A market may tend towards effective competition not only by means of new entry into the Revised Relevant WCA Market, but also by the deployment of alternative infrastructure by Access Seekers that would allow them to offer broadband services absent regulation in the Revised Relevant WCA Market.

- (b) A decrease in Eircom's retail broadband market share, corresponding with increasing market shares of competing retail broadband SP(s); and
- (c) An increase in the self-supply of retail broadband by SPs using upstream WLA inputs (thereby removing the need for SPs to purchase WCA in order to provide retail broadband to their own End Users).

4.143 Assessing market shares based on WCA volumes alone fails to account for the indirect retail constraint on the Revised Relevant WCA Markets generated by self-supply of retail broadband using inputs other than Eircom WCA. In particular, as set out at paragraph 3.44 above, ComReg identified Vodafone and Virgin Media as POs on the basis of the indirect retail constraints which they offer. Vodafone offers an indirect retail constraint on the provision of WCA, on the basis of its purchases of VUA from Eircom and SIRO to offer retail broadband to its own End Users, while Virgin Media offers an indirect retail constraint on the basis of its provision of retail broadband to its own End Users, on its own CATV network.

4.144 Having regard to the extent to which retail broadband is capable of being delivered over CG and NG broadband inputs, taking account of market shares based on both WCA and retail broadband volumes is a more accurate indicator of the extent of competition within the Revised Relevant WCA Markets.

Volume of WCA lines provided by each SP

4.145 Demand for Eircom WCA decreased slightly by 4% to [REDACTED] EIRCOM: [REDACTED] [REDACTED] %] between the publication of the 2018 Decision in Q3 2018, and Q1 2021 (noting also that there has been growth in total retail demand for broadband services). As of Q1 2021, BT accounted for a total of [REDACTED] BT: [REDACTED] [REDACTED] %] nationally. Accordingly, Eircom still accounts for [REDACTED] EIRCOM: [REDACTED] %]¹⁴⁸ of merchant market sales of WCA to Access Seekers. No other SPs are currently active in the provision of merchant market WCA, but ComReg notes a number of SPs choose to self-supply WCA (including on the basis of upstream purchases of VUA).

4.146 As of Q1 2021, as set out at Table 21 below, Eircom Retail continues to account for 32% of all WCA lines on both the Revised Urban WCA Market and the Revised Regional WCA Market.

¹⁴⁸ 81-90%.

Table 21: % WCA Market Share in the presence of regulation, Q1 2021
 [REDACTED]

WCA Market	Revised Urban	Revised Regional
BT	[REDACTED]	[REDACTED]
Eir Retail	[REDACTED]	[REDACTED]
Virgin Media	[REDACTED]	[REDACTED]
Vodafone	[REDACTED]	[REDACTED]
Eircom Other¹⁴⁹	[REDACTED]	[REDACTED]
Total	100%	100%

4.147 Vodafone is the largest purchaser of Eircom merchant market WCA on the Revised Urban WCA Market and the Revised Regional WCA Market, followed by BT:

Table 22: % purchase share of Eircom merchant market WCA in the Revised Relevant WCA Markets, Q1 2021 [REDACTED]¹⁵⁰

WCA Market	Revised Urban		Revised Regional	
	%	N	%	N
BT	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Vodafone	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
OAO	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	100	[REDACTED]	100	[REDACTED]

4.148 As set out at Table 23 below, WCA market shares, in the Reassigned EAs have changed. Eircom's market share in the Reassigned EAs has fallen by 23%. However, within the Revised Regional WCA Market Eircom maintains a high and stable market share.

¹⁴⁹ Refers to Eircom lines sold to operators other than BT and Vodafone, and Eircom self-supply.

¹⁵⁰ OAOs category does not include Eircom Retail purchases.

Summary of conclusions on observable trends towards effective competition

- 4.149 Accordingly, ComReg considers that the trends above indicates a tendency towards effective competition in the Revised Urban WCA Market (including the Reassigned EAs). ComReg notes that, as outlined in Table 23, Eircom's market share on the Reassigned EAs has decreased from [X EIRCOM: ██████████ X]¹⁵¹ since Q4 2018, while BT, Virgin Media and Vodafone's shares have increased over the same time period by [X ██████████ X]¹⁵² respectively. ComReg further notes that, while demand for retail broadband services has grown, demand for Eircom WCA decreased slightly by 4% to [X EIRCOM: ██████████ X] access paths between the publication of the 2018 Decision in Q3 2018, and Q1 2021, suggesting that SPs are becoming less reliant on Eircom WCA and are switching to the supply of retail broadband to their own End Users on the basis of other wholesale inputs.
- 4.150 However, there is insufficient evidence of a similar tendency towards effective competition in the footprint of the Revised Regional WCA Market.

Potential Entry to the Revised Relevant WCA Markets

- 4.151 Having regard to the assessment of observable trends of a tendency towards effective competition, ComReg now examines the likelihood, extent and timeliness of potential entry into each of the Revised Relevant WCA Markets. This involves considering competitive constraints that may materialise over a medium to long term horizon, and entry into the Revised Relevant WCA Markets is likely to require an SP to incur a range of upfront costs.
- 4.152 However, the barriers to entry faced by any individual SP are likely to differ, depending on whether or not the SP already has a significant retail broadband customer base, or a NG broadband network is available which is capable of delivering WCA (including the use of such networks by Access Seekers). ComReg therefore assesses the potential for entry and expansion on the Revised Relevant WCA Markets by the following types of SPs:
- (a) **Greenfield Entrant(s):** These are SPs that do not have an existing retail broadband customer base, or broadband infrastructure;
 - (b) **Non-Networked retail broadband SPs:** These are SPs with a retail broadband presence, but which purchase network access from third parties (e.g. Sky);
 - (c) **Large Networked retail broadband SPs:** These are SPs with a retail broadband presence which are capable of self-supplying upstream inputs over their own network assets (e.g. Eircom and Virgin Media); and

¹⁵¹ From 61-70% to 41-50%.

¹⁵² By 11-20%, 0-10%, and 0-10%, respectively.

- (d) **Wholesale-only Network Operators:** These are SPs who are rolling out, or intend to roll out, network infrastructure, but who are not currently, and do not intend to become, active at the retail level (e.g. SIRO and, on a forward-looking basis, NBI).

Greenfield Entrant

- 4.153 ComReg has considered the likelihood, extent and timeliness of market entry by greenfield entrants – that is, entities that have no, or very limited, presence on the retail broadband market, and no, or very limited, network infrastructure.
- 4.154 ComReg notes that, on the Revised Relevant WCA Markets, a greenfield entrant is likely to incur entry costs, including sunk costs associated with deploying network or interconnection infrastructure capable of delivering broadband network infrastructure. ComReg is of the view that, for a greenfield entrant, the costs of deploying extensive infrastructure capable of delivering WCA may not be justifiable from a commercial perspective, given, in particular, the need to generate sufficient traffic volumes to support the cost of infrastructure investment. ComReg has no evidence of any expected greenfield entry to the Reassigned EAs.

Non-Networked retail broadband SP

- 4.155 ComReg has considered the likelihood, extent and timeliness of entry to the provision of WCA by a non-networked retail broadband SP – that is, an SP with a non-trivial retail broadband presence, which is reliant on merchant market purchase of network access inputs (e.g. Vodafone, which relies on the purchase of upstream WLA inputs from both Eircom and SIRO, and WCA inputs from Eircom). It should be noted that such a non-networked SP which offers retail broadband on the basis of wholesale NG broadband inputs is already present on the Revised Relevant WCA Markets by virtue of the indirect retail constraint assessment set out at Section 5 of the 2018 Decision.
- 4.156 An SP aiming to backwards integrate into the Revised Relevant WCA Markets is likely to incur entry costs including sunk costs associated with deploying network or interconnection infrastructure.

4.157 Given general market trends away from the use of FNA and towards NG broadband, ComReg discounts the possibility that an SP would roll out an FNA network for the purpose of providing WCA. However, even in the case of broadband infrastructure, it is not clear what incentive an SP currently making use of upstream WCA inputs to provide retail broadband has to backwards integrate into the provision of WCA, given the substantial costs that would be incurred in doing so, including costs associated with the development of wholesale billing and administration systems. If a retail broadband SP were generating sufficient retail broadband volumes that it would benefit from ceasing to purchase wholesale inputs from third parties (including Eircom WCA), the benefit would be most immediately realised by rolling out network infrastructure to engage in retail broadband self-supply, rather than by providing WCA. The likelihood and extent of entry would, therefore, also be dependent on the SP's ability to achieve economies of scale in the self-supply of WCA and the economics of such network rollout.

Large networked retail broadband SPs

4.158 ComReg has considered the likelihood, extent and timeliness of entry by a large networked retail broadband SP – that is to say, an SP which operates its own network, and also provides retail broadband on a large but sub-national basis. Aside from Eircom, the only such SP is Virgin Media. In the first instance, it should be noted that, as with non-networked SPs, which offer retail broadband on the basis of wholesale NG broadband inputs, large networked retail broadband SPs, such as Virgin Media, are already present, predominantly on the Revised Urban WCA Market, by virtue of the indirect retail constraint set out at Section 5 of the 2018 Decision. ComReg notes that Virgin Media indicated to ComReg in an April 2019 response to an IIR that [redacted] **VMI:** [redacted] [redacted] This suggests that Virgin Media is unlikely to commence the provision of WCA over the lifetime of this market review.

4.159 However, in a hypothetical scenario where Virgin Media considered commencing provision of WCA, ComReg notes that it would likely already have achieved sufficient economies of scale to warrant investment in additional infrastructure necessary to deliver WCA on a merchant market basis, within its network footprint on the Revised Urban WCA Market (noting that ComReg does not consider that Virgin Media acts as an effective competitive constraint on the Revised Regional WCA Market). In such circumstances, Virgin Media would likely face reduced upfront costs of entry into the Revised Urban WCA Market (rather than all of the entry costs identified above). In particular, it would likely already have incurred many of the sunk costs associated with infrastructure investment, and therefore could potentially leverage that infrastructure to supply WCA.

4.160 In such cases, ComReg considers that the cost that would be incurred by a large networked retail broadband SP (such as Virgin Media) in diverting WCA for the purposes of retail broadband self-supply, to the supply of merchant market WCA would be reduced, relative, for instance, to the costs that would be incurred by greenfield entrants.

- 4.161 Accordingly, **in principle**, ComReg considers that entry to the Revised Urban WCA Market by a large networked retail broadband SP could potentially occur over the remainder of this market review (although ComReg has no evidence to suggest it will), given that a significant amount of the costs associated with providing WCA will already have been sunk. The costs associated with developing wholesale billing and administration systems could be a relevant factor which might militate against such potential entry occurring. Entry would also depend on the attractiveness of WCA already made available by existing suppliers (Eircom and BT), and the willingness of existing Access Seekers to switch SP.
- 4.162 **In practice**, however, ComReg considers that such market entry is currently unlikely, given that, apart from Eircom, Virgin Media is the only large networked retail broadband SP present on the market, and it has to date [§<VMI: ██████████
██████████
██████████ §<].

Wholesale-only Network Operators

- 4.163 ComReg has also considered the likelihood, extent and timeliness of expansion by wholesale-only network operators (SIRO and, on a forward-looking basis, NBI) from the provision of WLA into the provision of WCA. As set out in the 2018 Decision, SIRO is already included in the relevant WCA markets on the basis of the constraint which it exercise by means of supply-side substitution.
- 4.164 Aside from the possibility of acting as a supply-side substitute, SIRO also facilitates the indirect retail constraint on the Revised Relevant WCA Markets generated by Vodafone, by providing wholesale NG broadband inputs over which retail broadband may be offered by Vodafone to its own End Users.
- 4.165 NBI is also a wholesale-only network operator. As set out in detail at Section 3 above, ComReg does not consider that, over the remaining lifetime of the market review period, NBI is likely to be able to enter the Revised Relevant WCA Markets at a level of coverage which would amount to a sufficiently effective level of potential competition, given the timing of expected rollout (and, for that reason, has not been designated as a PO). Moreover, even if NBI were to be deemed a potential entrant, its impact would be extremely limited, based on the assessment of whether it would meet the Step 2 geographic assessment criteria set out at paragraph 3.78 above. ComReg notes, however, that as it continues to roll out its network beyond the lifetime of this market review, NBI may in future be capable of facilitating trends towards effective competition on the Revised Relevant WCA Markets. However, based on limited network coverage and market share, ComReg considers that this is not currently the case, and is unlikely to be the case over the remaining lifetime of this market review.

Expected or foreseeable technological and economic developments

4.168 This section identifies anticipated technological or economic developments that may alter the competitive dynamic of the Revised Relevant WCA Markets, and considers how such developments might impact on the market. Two key developments are of relevance in this instance – firstly, Eircom’s proposed network modernisation programme, and, secondly, the ongoing rollout of NGA networks capable of delivering WCA and/or retail broadband.

Eircom network modernisation

4.169 This section identifies any anticipated technological or economic developments that may alter the competitive dynamic of the Relevant WCA Markets and considers how such developments might impact on the market.

4.170 Eircom will ultimately decommission its legacy FNA network (‘copper switch-off’) and initial correspondence to this effect has already taken place between Eircom and ComReg. In March 2021, open eir published a White Paper entitled “Copper switch-off: Leaving a legacy for the Future” (the ‘**White Paper**’) which set out some indicative proposals in respect of Eircom’s approach to copper switch-off, although no process or timelines have been yet agreed for this.¹⁵³ In an April 2021 Information Notice, ComReg published correspondence between itself and Eircom in respect of the White Paper, in the course of which it noted that it intends to consult publicly on this matter in due course.¹⁵⁴

4.171 However, Eircom has also proposed to implement a network modernisation programme (using a PSTN emulation solution) which would effectively lengthen the useful lifetime of its copper access network by routing traffic through an IP core network. As of October 2021, it is unclear how exactly Eircom intends to proceed with its network modernisation programme, based on its recent White Paper.

¹⁵³ Available online at https://www.openeir.ie/wp-content/uploads/2021/03/White-paper_Leaving-a-Legacy.pdf

¹⁵⁴ ComReg - Eircom Correspondence on Copper Switch Off. Information Notice, Reference: ComReg 21/35, Date: 09/04/2021.

Ongoing rollout of NG networks capable of delivering retail broadband

- 4.172 As set out in detail at paragraphs 4.39 to 4.40 above, Virgin Media, SIRO, NBI and Eircom all continue to roll out their respective NG broadband networks. Virgin Media, SIRO and Eircom all do so on a commercial basis, while NBI rolls out its network in the IA on a non-commercial basis, pursuant to public policy. By design, NBI will roll out in areas of the State not otherwise served, nor likely to be served, by NG broadband on a commercial basis. At the EA level, this suggests that NBI rollout will be predominantly concentrated within the Revised Regional WCA Market, although NBI rollout will also occur within the Revised Urban WCA Market, given that the IA is identified at the premises level, whereas the Revised Relevant WCA Markets are defined at the EA level. Accordingly, NBI will roll out, for instance, to those premises in EAs falling within the Revised Urban WCA Market which fall into the IA due, for instance, to extended distance from a cabinet, or specific topographical or engineering characteristics which render those premises unattractive from a commercial perspective. However, for the reasons set out above, ComReg is of the view that NBI rollout over the remaining lifetime of this market review period will not be at a sufficient level to influence whether either of the Revised Relevant WCA Markets are tending towards effective competition.
- 4.173 In contrast, the rollout of Virgin Media, SIRO and Eircom's NG networks is likely to be concentrated within the footprint of the Revised Urban WCA Market and, in the case of SIRO and Virgin Media, this is specifically internalised in the geographic assessment exercise at Section 3 above, where Step 2 Criterion 4A assesses whether ANO (that is to say, SIRO and Virgin Media) coverage exceeds 30% at an EA. Accordingly, the ongoing rollout of these networks is likely to be capable of facilitating the development of effective competition within the Revised Urban WCA Market within the remaining lifetime of this market review. In contrast, the comparative absence of such rollout – that is to say, at a level below 30% coverage in the case of SIRO or Virgin Media - suggests that the Revised Regional WCA Market will not tend towards effective competition over the lifetime of this market review period on the basis of additional NG broadband network rollout.

Summary of conclusions on expected or foreseeable technological and economic developments

4.174 ComReg considers that constraints arising from the provision of retail broadband may point towards the emergence of a tendency towards effective competition on a forward-looking basis in the Revised Urban WCA Market, where NG infrastructure has already been rolled out. However, there does not appear to be evidence of a tendency towards effective competition in the footprint of the Revised Regional WCA Market, noting Eircom's high (>50%) market share, the comparative lack of other POs present, and the lower coverage levels of ANOs, where they are present, compared to the Revised Urban WCA Market. As indicated in Table 23, Eircom still maintains a [X EIRCOM: █████ X] market share in this market, followed by Vodafone with a share of [X VODAFONE: █████ X] and BT and Virgin Media with a [X █████ X] market share. This may change in due course, pending rollout of NBI in the IA. The presence of such competition arising *inter alia* from indirect retail constraints is highly dependent on the sufficient presence of NG broadband networks at EAs.

Overall Conclusions on Tendency of the Revised Relevant WCA Markets towards Effective Competition

4.175 In paragraphs 4.139 to 4.174, ComReg has examined whether the Revised Relevant WCA Markets are likely to tend towards effective competition within the relevant time horizon, having regard to:

- (a) Any observable trends towards effective competition;
- (b) Whether alternative SPs are in a position to roll out infrastructure, to the extent that they would be able to effectively compete with Eircom in the Revised Relevant WCA Markets; and
- (c) Any expected or foreseeable technological and economic developments that will impact on competition within the time period of the market review.

4.176 ComReg concludes that the Revised Urban WCA Market is likely to be tending towards effective competition on a forward-looking basis. The presence of Eircom and SIRO NG broadband networks in the footprint of the Revised Urban WCA Market allows Access Seekers to deliver retail broadband using these inputs.

4.177 In respect of technological and economic developments, ComReg notes that the (increasing) provision of NG broadband by ANOs over the lifetime of this market review, along with other factors, may facilitate the emergence of a tendency towards effective competition on a forward-looking basis in the Revised Urban WCA Market, having regard to the availability of such NG infrastructure.

- 4.178 ComReg considers that the dynamics of competition on the Revised Relevant WCA Markets are likely to change over time in line with increasing coverage of alternative networks. However, based on current market dynamics, ComReg's view is that the Revised Urban WCA Market is likely to fail the second criterion of the 3CT on the basis that it is tending towards effective competition.
- 4.179 The trends identified above suggest that the Revised Urban WCA Market is characterised by greater levels of competition, arising from direct demand-side constraints offered by BT supply of WCA and also effective indirect constraints generated at the retail level. Where broadband rollout has occurred, SPs are able to offer a suite of services to End Users on the basis of purchases of WLA from Eircom or SIRO (together with Virgin Media on a self-supply basis on the Revised Urban WCA Market), and can therefore avoid the costs of purchasing Eircom WCA.
- 4.180 In contrast, ComReg's assessment is that the Revised Regional WCA Market is not likely to be tending towards effective competition, based on insufficient observable trends towards effective competition, the lack of or lower level of potential entry, and limited technological developments, in comparison to the Revised Urban WCA Market. In particular, ComReg notes that Eircom retains a high and stable market share on the Revised Regional WCA Market.
- 4.181 SP network rollout in the footprint of the Revised Regional WCA Market has been limited to date. Accordingly, it is unlikely that, on the basis of network coverage as set out at Table 17 above, effective competition will be provided by the provision of WCA or retail broadband using wholesale NG broadband inputs, pending rollout of NBI in the IA.
- 4.182 Accordingly, ComReg considers that, within the relevant time horizon for this market review, the Revised Regional WCA Market is not likely to tend towards effective competition. ComReg's view is, therefore, that the second 3CT criterion is likely to pass in relation to the Revised Regional WCA Market.

Criterion 3: The insufficiency of competition law alone to adequately address the market failure(s) concerned

- 4.183 *Ex ante* regulation should only be imposed where competition law remedies are likely to be insufficient to address identified competition problems. The third criterion therefore assesses the sufficiency of competition law by itself to deal with any market failures identified in the market analysis, absent *ex ante* regulation.
- 4.184 In this respect, *ex ante* regulation should only apply in markets where an NRA is satisfied on the basis of its analysis, and the evidence available to it, that national and EU competition law are unlikely to be sufficient to redress market failures where they arise, and to ensure effective and sustainable competition.

- 4.185 *Ex ante* regulation may, in general, be more appropriate to markets which, due to underlying structural characteristics (such as, for example, the presence of natural monopoly), or due to repeated patterns of behaviour, are deemed more likely to exhibit ongoing competition problems which would, ultimately, lead to persistent harm to End Users which the market would be unlikely to remedy, due to the absence of the self-correcting mechanisms which are normally present in competitive markets, and which typically discipline efforts by firms present on a market to exercise market power. Accordingly, regulation may be appropriate to markets where it can be predicted, with a high level of probability, that competition problems are likely to occur.
- 4.186 In contrast, *ex post* competition law may be more appropriate to markets which are not structurally prone to competition problems, or characterised by repeat patterns of anticompetitive behaviour. In such markets, competition may be generally presumed to be working well, due to the presence of sufficient competitive constraints which are capable of disciplining market participants, to the ultimate benefit of End Users. Competition law may be a more appropriate means of assuring competitive outcomes in such markets, on the assumption that anti-competitive conduct is likely to be the exception, rather than the rule. In such cases, it may not be reasonable to impose an ongoing burden of compliance with regulatory obligations on a firm or firms designated with SMP, and it may be preferable instead to rely on the protections afforded by *ex post* competition law.
- 4.187 Competition law requires the commission and detection of an anti-competitive act. A National Competition Authority ('NCA') or NRA must then assess the allegedly anti-competitive act to determine whether it likely breaches the Competition Act 2002, or Articles 101 or 102 of the Treaty on the Functioning of the European Union (TFEU). In order to apply effective sanctions, an NCA or NRA may then need to initiate court proceedings, which may or may not be successful. This is a lengthy process which would likely be less effective in deterring and preventing anti-competitive conduct in the short to medium term in markets which are structurally prone to anticompetitive conduct.
- 4.188 Accordingly, ComReg is of the view that competition law is unlikely to be sufficient to adequately address market failures on the Revised Relevant WCA Markets.

Conclusions on insufficiency of competition law

- 4.189 For the reasons set out above, ComReg is of the view that competition law alone would not be adequate to address market failures which may arise on the Revised Relevant WCA Markets. Accordingly, the third criterion passes in relation to the Revised Relevant WCA Markets.

Three criteria test conclusions

4.190 Based on the assessment it has carried out above, ComReg concludes that, overall, there are grounds to conclude that the Revised Urban WCA Market fails the 3CT, as it fails both Criterion 1 and Criterion 2. The Revised Regional WCA Market passes the 3CT. This suggests that there are no grounds to warrant ongoing regulation of the Revised Urban WCA Market and, in particular, the Reassigned EAs. In contrast, the 3CT suggests that there are grounds to continue regulating the Revised Regional WCA Market.

Competition Assessment

4.191 Having completed the 3CT, ComReg concludes that there are insufficient grounds to alter its conclusion that the Revised Regional WCA Market continues to warrant regulation. However, the 3CT suggests that there are grounds to remove regulation from the Revised Urban WCA Market. Given that the 2018 Urban WCA Market has already been deregulated, it is therefore necessary to carry out an assessment of the Reassigned EAs which are currently subject to regulation and are now deemed to be part of the Revised Urban WCA Market.

4.192 In carrying out this assessment, ComReg follows the same assessment methodology as it applied in respect of the 2018 Urban WCA Market. Accordingly, ComReg considers:

- (a) Existing competition at the Reassigned EAs (at paragraphs 4.194 to 4.204);
- (b) Potential competition at the Reassigned EAs (at paragraphs 4.216 to 4.221; and
- (c) Countervailing Buyer Power (at paragraphs 4.222 to 4.225 below).

Existing competition

4.193 ComReg has assessed trends towards effective competition in its 3CT Criterion 2 assessment above, and notes that there is significant overlap between that assessment and the SMP assessment of existing competition.

Market shares

4.194 Similar to the position in the 2018 Decision, absent regulation in the Revised Urban WCA Market, by definition, Eircom also faces at least two POs capable of providing retail and/or wholesale broadband services (as this is a requirement of Step 2 Criterion 1 of the geographic assessment exercise). As set out at Table 23 below, as of Q1 2021, Eircom's market share on the Reassigned EAs was similar to its market share on the 2018 Urban WCA Market, and significantly lower than its market share in the Revised Regional WCA Market. ComReg's underlying assumptions in its calculation of these market shares are set out at Annex: 2 below. In particular, market shares are not assigned to SIRO, since it is present on the Revised Relevant WCA Market only by means of the (currently hypothetical) supply-side constraint which it imposes.

Table 23: WCA Market Shares [X REDACTED X]

		Eircom	Virgin Media	BT	Vodafone
2018 Urban WCA Market ¹⁵⁵		[X ■■■ X]	[X ■■■]	[X ■■■ X]	[X ■■■ X]
Reassigned EAs [81]	Q1 2021 ¹⁵⁶	[X ■■■ X]	[X ■■■ X]	[X ■■■ X]	[X ■■■ X]
	Q4 2017 ¹⁵⁷	[X ■■■ X]	[X ■■■ X]	[X ■■■ X]	[X ■■■ X]
	% change	-23%	+3%	+11%	+9%
Revised Regional WCA Market, Q1 2021 ¹⁵⁸		[X ■■■ X]	[X ■■■ X]	[X ■■■ X]	[X ■■■ X]
Revised Urban WCA Market, Q1 2021 ¹⁵⁹		[X ■■■ X]	[X ■■■ X]	[X ■■■ X]	[X ■■■ X]

4.195 Since the publication of the 2018 Decision, Eircom's market share on the Reassigned EAs has declined substantially, while the market shares of other POs have increased. The key differences between market shares on the Reassigned EAs as of 2018, and again as of Q1 2021, are:

- (a) Eircom's lower market share (2021: 35-45% v. 2018: 61-70%);
- (b) Vodafone's higher market share (2021: 15-25% v. 2018: 11-20%);

¹⁵⁵ Market shares: (Eircom 31-40%), (Virgin Media 41-50%), (BT 11-20%), (Vodafone 11-20%).

¹⁵⁶ Market shares: (Eircom 35-45%), (Virgin Media 11-20%), (BT 11-20%), (Vodafone 21-30%).

¹⁵⁷ Market shares: (Eircom 61-70%), (Virgin Media 11-20%), (BT 0-10%), (Vodafone 11-20%).

¹⁵⁸ Market shares: (Eircom 65-75%), (Virgin Media 0-10%), (BT 0-10%), (Vodafone 11-20%).

¹⁵⁹ Market shares: (Eircom 35-45%), (Virgin Media 15-25%), (BT 11-20%), (Vodafone 21-30%).

- (c) BT's higher market share (2021: 11-20% v. 2018: 0-10%); and
- (d) Virgin Media's higher market share (2021: 15-25% v. 2018: 11-20%).

4.196 Eircom's declining market share on the Reassigned EAs relative to the 2018 Decision suggests (but is not determinative in itself) that it now faces greater competitive constraints on the Reassigned EAs which were either not present or less effective, at the time of the 2018 Decision. Such constraints are also consistent with the constraints it faced in the EAs falling within the 2018 Urban WCA Market.

Pricing behaviour

4.197 In the 2018 Decision, ComReg concluded that Eircom would not likely be in a position to profitably raise prices above the competitive level, limiting its ability to behave, to an appreciable extent, independently of competitors, customers or consumers on the 2018 Urban WCA Market.

Respondents' Views

4.198 ALTO disagreed with ComReg's assessment. It suggested that the variance in pricing in the Urban WCA Market and Regional WCA Market was due to Eircom's competitive advantage and ability to manipulate the 2018 Urban WCA Market. ALTO considered that ComReg's assessment of Eircom's pricing behaviour was '*extraordinarily benign*'.

ComReg's Assessment

4.199 ComReg refutes ALTO's assessment of Eircom's pricing behaviour. While ComReg notes that, in the (deregulated) 2018 Urban WCA Market, there are instances of Eircom charging higher prices for certain CG WCA services, relative to the 2018 Regional WCA Market, on which WCA prices continue to be regulated, as set out at Table 24 below, these differences do not arise from the exercise by Eircom of SMP.

4.200 ComReg research, based on a review of Eircom’s Broadband Service Price List¹⁶⁰ and Commercial Interconnection Services Price List (‘CISPL’)¹⁶¹ indicates that, since the 2018 Decision, Eircom appears to have charged different prices for the same WCA products, depending on whether they are provided on the 2018 Urban WCA Market, or the 2018 Regional WCA Market. In respect of **CG WCA**, prices for equivalent CG Bitstream products are consistently more expensive on the 2018 Urban WCA Market, and this price difference increases with speed profiles, as set out at Table 24 below. While regulated prices on the 2018 Regional WCA Market are the same for all CG speed profiles, on the 2018 Urban WCA Market, prices increase for higher CG speed profiles. However, Eircom has not increased its CG Bitstream prices since deregulation in the Urban WCA Market. Rather, it has continued to charge the price ceiling arising from the former regulated prices on the 2018 Urban WCA Market.

Table 24: Eircom CG Bitstream IP Prices, 2019-2021

Bitstream Product	Date	2018 WCA Market		Difference	
		Regional	Urban	€	%
Connect	Publication of 2018 Decision	€9.48			
	01/03/19 – 30/06/19	€5.85	€9.48	€3.63	62%
	01/07/19 - 30/06/20	€8.95	€9.48	€0.53	6%
	01/07/20 - 30/06/21	€9.14	€9.48	€0.34	4%
	01/07/21 -	€9.37	€9.48	€0.11	1%
Expand IP	Publication of 2018 Decision	€11.55			
	01/03/19 – 30/06/19	€6.75	€11.55	€4.80	71%
	01/07/19 - 30/06/20	€8.95	€11.55	€2.60	29%
	01/07/20 - 30/06/21	€9.14	€11.55	€2.41	26%
	01/07/21 -	€9.37	€11.55	€2.18	23%
Rapid IP	Publication of 2018 Decision	€14.00			
	01/03/19 – 30/06/19	€7.75	€14.00	€6.25	81%
	01/07/19 - 30/06/20	€8.95	€14.00	€5.05	56%
	01/07/20 - 30/06/21	€9.14	€14.00	€4.86	53%
	01/07/21-	€9.37	€14.00	€4.63	49%
Zoom IP	Publication of 2018 Decision	€15.00			
	01/03/19 – 30/06/19	€10.95	€15.00	€4.05	37%
	01/07/19 - 30/06/20	€8.95	€15.00	€6.05	68%
	01/07/20 - 30/06/21	€9.14	€15.00	€5.86	64%
	01/07/21 -	€9.37	€15.00	€5.63	60%

¹⁶⁰ Available at https://www.openeir.ie/wp-content/uploads/2021/06/Broadband-Price-List-V22_0-Unmarked-25062021.pdf

¹⁶¹ Available at https://www.openeir.ie/wp-content/uploads/2021/06/CISPL-V43_0-Unmarked-25062021.pdf

Swift IP	Publication of 2018 Decision	€16.50			
	01/03/19 – 30/06/19	€11.50	€16.50	€5.00	43%
	01/07/19 - 30/06/20	€8.95	€16.50	€7.55	84%
	01/07/20 - 30/06/21	€9.14	€16.50	€7.36	81%
	01/07/21 -	€9.37	€16.50	€7.13	76%
Sprint IP	Publication of 2018 Decision	€21.50			
	01/03/19 – 30/06/19	€14.80	€21.50	€6.70	45%
	01/07/19 - 30/06/20	€8.95	€21.50	€12.55	140%
	01/07/20 - 30/06/21	€9.14	€21.50	€12.36	135%
	01/07/21 -	€9.37	€21.50	€12.13	129%
Turbo IP Plus	Publication of 2018 Decision	€24.50			
	01/03/19 - 30/06/19	€15.80	€24.50	€8.70	55%
	01/07/19 - 30/06/20	€8.95	€24.50	€14.55	146%
	01/07/20 - 30/06/21	€9.14	€24.50	€15.36	168%
	01/07/21 -	€9.37	€24.50	€15.13	161%

4.201 CG Bitstream BMB prices are higher in the Urban WCA Market than in the Regional WCA Market. The bulk of this differential is due to the fact that the Urban prices do not have an SAH discount, whereas the Regional WCA Market does.

Table 25: CG Bitstream BMB Prices in the Urban and Regional Markets Port and Usage (and including SAH discount for the Regional Market Only)

Bitstream BMB	Regional ¹⁶²	Urban	Difference	% difference
24m/b	€22.00	€23.91	€1.91	9%
8m/b	€21.00	€22.91	€1.91	9%

4.202 ComReg is of the view that this pricing behaviour is not necessarily indicative of Eircom capacity to exert market power. Rather, Eircom has an interest in moving Access Seekers from older legacy CG WCA technology to newer NG WCA, and Eircom differential pricing reflects a commercial decision to incentivise Access Seekers to move from CG WCA to NG WCA. This is supported by ComReg QKDR data, which indicate that, as of Q4 2017, 57% of WCA was delivered over CG DSL Bitstream, compared to 43% delivered over NG VDSL Bitstream. As of Q1 2021, these figures had reversed, with 32% of WCA was delivered over CG DSL Bitstream, compared to 68% delivered over NG VDSL Bitstream.

¹⁶² SAH discount applies only to Regional Bitstream BMB.

4.203 ComReg also assessed Eircom pricing behaviour in respect of NG Bitstream prices on the 2019 Urban WCA Market and the 2019 Regional WCA Market. That assessment, set out at Table 26 below, indicates that Regional WCA is either less than or equal to 2019 Urban WCA Market prices.

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Table 26: Eircom NG Bitstream Prices, Monthly Port charges, 2019-2021

NGA Bitstream Plus Product	Date	Regional	Urban	Price difference	
		€	€	€	%
Standalone FTTC	01/07/19 - 30/06/20	€24.68	€28.84	€4.16	17%
	01/07/20 - 30/06/21	€24.94	€28.84	€3.90	16%
	01/07/21 -	€25.27	€28.84	€3.57	14%
Standalone FTTH 150Mbps	01/07/19 - 30/06/20	€29.34	€29.34	€0.00	0%
	10/07/20 - 30/06/21	€29.49	€29.49	€0.00	0%
	01/07/21 -	€29.72	€29.72	€0.00	0%
Standalone FTTH 300Mbps	01/07/19 - 30/06/20	€34.34	€34.34	€0.00	0%
	10/07/20 - 31/12/20	€29.49	€29.49	€0.00	0%
	01/07/21 -	€29.72	€29.72	€0.00	0%
Standalone FTTH 500Mbps	27/04/20 - 30/06/20	€34.34	€34.34	€0.00	0%
	01/07/20 - 30/06/21	€29.49	€29.49	€0.00	0%
	01/07/21 -	€29.72	€29.72	€0.00	0%
Standalone FTTH 1000Mbps	01/07/19 - 31/01/20	€44.34	€44.34	€0.00	0%
	01/02/20 - 30/06/20	€39.34	€39.34	€0.00	0%
	01/07/20 - 30/06/21	€34.49	€34.49	€0.00	0%
	01/07/21 -	€34.72	€34.72	€0.00	0%
POTS Based FTTC ¹⁶³	01/07/19 - 30/06/20	€10.76	€13.93	€3.17	29%
	01/07/20 - 30/06/21	€11.03	€13.93	€2.90	26%
	01/07/21 -	€11.71	€14.16	€2.45	21%
POTS Based FTTH 150Mbps	01/07/19 - 30/06/20	€14.93	€14.93	€0.00	0%
	10/07/20 - 30/06/21	€15.08	€15.08	€0.00	0%
	01/07/21 -	€15.31	€15.31	€0.00	0%
POTS Based FTTH 300Mbps	01/07/19 - 30/06/20	€19.93	€19.93	€0.00	0%
	10/07/20 - 31/12/20	€15.08	€15.08	€0.00	0%
		€15.31	€15.31	€0.00	0%
POTS Based FTTH 500Mbps	27/04/20 - 30/06/20	€19.93	€19.93	€0.00	0%
	10/07/20 - 30/06/21	€15.08	€15.08	€0.00	0%
		€15.31	€15.31	€0.00	0%
POTS Based FTTH 1000Mbps	01/07/19 - 31/01/20	€29.93	€29.93	€0.00	0%
	01/02/20 - 30/06/20	€24.93	€24.93	€0.00	0%
	10/07/20 - 30/06/21	€20.08	€20.08	€0.00	0%
		€20.31	€20.31	€0.00	0%

¹⁶³ The POTS-based tariffs listed are based on the premise that the customer is already contributing to the cost of WLR, which is currently €16.59 per month.

4.204 Accordingly, data available to ComReg suggest that there are differences in Eircom pricing behaviour between the 2018 Urban WCA Market and the 2018 Regional WCA Market. This provides Access Seekers with the incentive to compete in the provision of WCA or downstream retail service provision, on the basis of regulated WLA inputs. ComReg is of the view that these price differences reflect Eircom's strategic intent to move Access Seekers from WCA delivered over FTTC technology, to WCA delivered over FTTH technology, in the case of the provision of NG Bitstream.

The Margin Squeeze Test

Respondents' Views

4.205 In response to Question 2, ALTO and BT raised issues with the Wholesale Margin Squeeze Test ('**MST**') between (a) Wholesale Local Access products, services or facilities; and (b) Wholesale Central Access products, services and facilities provided in the WCA Markets. They both submitted that Eircom has the "*clear ability and opportunity to act aggressively in the WCA market.*"

4.206 ALTO stated that the difference between the WLA and WCA products is largely who supplies the backhaul, hence the risk of a deregulated WCA market creating a margin squeeze with the WLA market. BT added that the difference between WLA and WCA product prices is extremely small and it is this that creates the margin squeeze risk.

4.207 ALTO and BT argued that it was essential that ComReg enforce the Margin Squeeze Test in the 2018 Decision.

4.208 ALTO and BT both asserted that ComReg needed to address the "*entirely inadequate*" and "*defunct*" wholesale enforcement regime in a "*proper ex ante basis*" and stated that ComReg's performance in this area had been unsatisfactory.

4.209 Vodafone, Sky and Eircom did not explicitly raise this issue.

ComReg's Assessment of Respondents' Views and Position

4.210 The MST that the respondents refer to is described at paragraphs 12.12 to 12.17 of the Decision Instrument appended to the 2018 Decision. Specifically, Eircom shall ensure that the rental charge offered or charged by it to any other Undertaking in relation to WLA shall not cause a margin squeeze between (a) WLA products, services, or facilities; and (b) WCA products, services and facilities provided in the WCA Markets.

- 4.211 Firstly, ComReg contends that this discussion is out of scope of this Decision. Neither the Consultation nor this Decision propose to reimpose price controls on previously deregulated markets. Instead, the aim of this Mid-term assessment is a mechanical reapplication of the market definition and competition assessments carried out in the 2018 Decision to determine if the further deregulation of the WCA market is warranted. It is not to reopen a discussion on the merits of any of the remedies, including this MST.
- 4.212 Secondly, as illustrated in Table 24 above, there is currently a margin between the price of WCA services in the Urban WCA Market and the Regional WCA Market. Given that Urban FTTC Bitstream prices are higher than Regional FTTC Bitstream prices and the cost oriented Regional FTTC Bitstream (WCA) prices are higher than cost oriented FTTC VUA (WLA) prices, this indicates that there is not currently a margin squeeze between WCA and WLA in the existing Urban WCA Market.
- 4.213 Furthermore, if the FTTC Bitstream price in the Urban WCA Market was pushed below the FTTC VUA price, then operators could pursue this issue on an *ex post* basis via competition law.
- 4.214 Finally, in the EAs within the Revised Urban Market, the analysis indicates that competitive constraints are in place.
- 4.215 In summary, this Decision does not propose to reimpose price controls on previously deregulated markets but rather is a mechanical re-application of the market definition and competition assessments carried out in the 2018 Decision to determine whether there are grounds to further deregulate the WCA market.

Potential competition

- 4.216 In assessing potential competition, ComReg considers two sub-headings, set out below. ComReg is of the view that the conclusions in respect of potential competition on the 2018 Urban WCA Market apply equally to the Reassigned EAs.

Barriers to entry and expansion

- 4.217 ComReg has assessed the role of barriers to entry and expansion above in its assessment of 3CT Criterion 1, and accordingly refers to the conclusions set out at paragraph 4.137 above, which apply with equal validity in respect of assessing potential competition on the Revised Relevant WCA Markets. ComReg considers, based on the evidence available to it, that, while the Revised Regional WCA Market appears to be characterised by the presence of barriers to entry and/or expansion, these barriers do not appear to be present, or do not appear to be present at a sufficient level to impede potential competition, on the Revised Urban WCA Market (including the Reassigned EAs).

4.218 In the Reassigned EAs, Eircom may, in the presence of WLA regulation and competition from independent networks and SPs using WLA inputs, face lower incentives to behave, to an appreciable extent, independently of its competitors, customers and consumers. Insofar as indirect constraints are concerned, rather than losing one of its own retail customers to another independent network (and the entire loss of profitability from that customer), it may face some incentive to provide wholesale services to SPs (and retaining profit from wholesale sales).

Strength of potential competitors

4.219 In considering the strength of potential competitors, ComReg assessed:

- (a) Building an independent network to offer WCA, including the use of upstream WLA inputs to do so; and
- (b) Adapting existing network to provide WCA.

4.220 In respect of option (a), it is ComReg's view that the analysis set out in the 2018 Decision – that potential competition arising from building an independent network is unlikely - continues to be valid in respect of the Revised Relevant WCA Markets. In this respect, ComReg notes that NBI rollout will amount to building an independent network. However, while there is likely to be substantial overlap between the Intervention Area and the Reassigned EAs as its network is rolled out – NBI will eventually have at least some presence in [REDACTED] ¹⁶⁴ of the 81 Reassigned EAs – it will only have commenced rollout at [REDACTED] ¹⁶⁵ of these EAs by the end of this market review period. It also remains to be seen what the competitive impact of such network rollout will be. Accordingly, NBI network rollout is unlikely to generate an effective competitive constraint arising from potential competition over the remaining lifetime of this market review period. ComReg recognises that this may change over a longer time horizon.

4.221 Similarly, in respect of option (b), it is ComReg's view that the analysis set out in the 2018 Decision continues to be valid in respect of the Revised Relevant WCA Markets. Specifically, Virgin Media and Vodafone are unlikely to adapt existing networks to offer WCA on the 2018 Regional WCA Market, but the hypothetical supply by SIRO in the WCA market on the basis of supply-side substitution does allow for the possibility of SIRO adapting an existing network to compete in the WCA Markets.

Countervailing Buyer Power ('CBP')

4.222 As outlined in paragraphs 4.19 to 4.22 above, in assessing CBP at the Reassigned EAs, ComReg considers:

¹⁶⁴ 71-80.

¹⁶⁵ 51-60.

- (a) Size of the buyer and its relative importance to the seller;
- (b) Credible alternative sources of supply; and
- (c) Evidence of bargaining power from negotiations.

4.223 In respect of factor (a), Eircom’s retail business is the largest purchaser of WCA at the Reassigned EAs. As set out at Table 27 below, while Eircom retail’s share of WCA purchases is lower in the Reassigned EAs compared to the 2018 Urban WCA Market, those purchases still account for over half of all WCA purchases, and are almost three times larger than purchases made by the single largest merchant market purchaser.

Table 27: Share of WCA Purchases from Eircom, Urban WCA Market Q4 2017 and Reassigned EAs, Q1 2021 [REDACTED]

WCA Purchaser	Reassigned EAs, Q1 2021			2018 Urban WCA		
	CG	NG	Total	CG	NG	Total
Eircom - Self Supply ¹⁶⁶	█	█	█	█	█	█
Merchant Market Supply: ¹⁶⁷	█	█	█	█	█	█
– Vodafone ¹⁶⁸	█	█	█	█	█	█
– BT ¹⁶⁹	█	█	█	█	█	█
– Digiweb ¹⁷⁰	█	█	█	█	█	█
– Imagine ¹⁷¹	█	█	█	█	█	█
– Magnet ¹⁷²	█	█	█	█	█	█
– Others ¹⁷³	█	█	█	█	█	█

4.224 In respect of factor (b), of the 81 Reassigned EAs, POs are present as follows:

- (a) **Eircom** – present at [REDACTED] Reassigned EAs;
- (b) **BT** – present at [REDACTED] Reassigned EAs;
- (c) **Virgin Media** – present at [REDACTED] Reassigned EAs;

¹⁶⁶ As of Q1 2021, 11-20% of Copper WCA, 41-50% of FTTx WCA, and 55-65% of Total WCA.

¹⁶⁷ As of Q1 2021, 11-20% of Copper WCA, 21-30% of FTTx WCA, and 35-45% of Total WCA.

¹⁶⁸ As of Q1 2021, 0-10% of Copper WCA, 11-2% of FTTx WCA, and 11-20% of Total WCA.

¹⁶⁹ As of Q1 2021, 0-10% of Copper WCA, 0-10% of FTTx WCA, and 11-20% of Total WCA.

¹⁷⁰ As of Q1 2021, 0-10% of Copper WCA, FTTx WCA, and Total WCA.

¹⁷¹ As of Q1 2021, 0-10% of Copper WCA, FTTx WCA, and Total WCA.

¹⁷² As of Q1 2021, 0-10% of Copper WCA, FTTx WCA, and Total WCA.

¹⁷³ As of Q1 2021, 0-10% of Copper WCA, FTTx WCA, and Total WCA.

(d) **Vodafone** – present at [REDACTED] Reassigned EAs; and

(e) **SIRO** – present at [REDACTED] Reassigned EAs.

4.225 In respect of factor (c), ComReg consider that the conclusions set out in the 2018 Decision remain valid. CBP on the Reassigned EAs is unlikely to suffice, on its own, to act as an effective competitive constraint on Eircom provision of WCA.

Respondent's View

4.226 Both ALTO and BT concur with ComReg's finding of a lack of CBP in their Submissions.

4.227 ALTO suggested that Eircom's pricing behaviour in the Urban WCA Market following the 2018 Decision, was indicative of a clear lack of CBP. ALTO expressed serious concerns over CBP and urged ComReg to take the utmost account of the absence of CBP.

4.228 BT argued that a lack of CBP was responsible for the price increase in the Urban WCA Market following the 2018 Decision, and believed ComReg should have anticipated this increase.

ComReg's Assessment

4.229 While ComReg agrees that CBP, on its own, would not be an effective constraint on Eircom, ComReg notes that, on the Revised Urban WCA Market (including the Reassigned EAs) Eircom is also subject to additional competitive constraints arising from both existing competition and potential competition. In contrast, ComReg's assessment suggests that such competitive constraints are not sufficiently effective on the Revised Regional WCA Market.

BT's Submission Table

4.230 As part of its submission, BT provided data¹⁷⁴ as evidence to suggest that deregulation led to prices premiums of up to 421% in the Urban WCA Market and that a price premium existed for FTTH in that market.

¹⁷⁴ BT Submission, Page 6

Table 28: BT Submission

	Average Usage per port	VUA port	Regional Bitstream Port	SAH Discount	WCA Net Cost	Urban Cost	€ Premium	% Premium
BMB 8Mb	1Mb/s	5.26	9.27	-2.14	1.87	4.23	2.36	126%
BMB 24Mb	1Mb/s	5.26	9.27	-2.14	1.87	5.13	3.26	174%
FTTC	2Mb/s	20.36	25.08	-2.95	1.77	9.22	7.45	421%
FTTH 150Mb	2Mb/s	23.5	30.23	-2.06	4.67	6.73	2.06	44%
FTTH 500Mb	2Mb	23.5	30.23	-2.06	4.67	6.73	2.06	44%
FTTH 1000Mb	3Mb	28.5	38.28	-2.06	7.72	7.1	-0.62	-8%

4.231 Table 28 above illustrates BT’s pricing assessment. It compares the prices of BMB (8/24Mb), FTTC Bitstream and FTTH Bitstream in both the Regional WCA Market and Urban WCA Market.

4.232 Whilst the Consultation focussed on the Port Tariffs only, BT’s submission includes the Port Tariffs, the usage costs and the Same Area Handover discounts.

4.233 BT suggest that this illustrates a differential of up to 421% between the Urban and Regional WCA Markets.

ComReg’s Assessment and Final Position

4.234 ComReg agrees that a table like this offers an inclusive assessment of the relevant prices. However, ComReg believes that the table in BT’s submission needs to be restated for the following:

- (a) Based on the prices from 1 July 2021 to 30 June 2022, the cost per MB for FTTC/FTTH is €0.31¹⁷⁵ and €0.47 for BMB 8Mb/24Mb.
- (b) There are no VUA equivalent products for the 8 and 24Mb CG BMB Bitstream services, and the inclusion of costs of €5.26/month for any such proxy products is unsupported
- (c) Based on the prices from 1 July 2021 to 30 June 2022, the cost of SAH discount varies between €2.17 in FTTH Bitstream, €2.23 for BMB 8Mb/24Mb and €3.07 for FTTC.

4.235 ComReg has drafted a version of this table (Table 29 below), which includes these amendments. This table is based on tariffs applicable from 1 July 2021 as detailed in Open Eir’s Reference Offer proposals, as outlined [Broadband Price List V22](#) and [CISPL V43](#).

¹⁷⁵ Openeir.ie Broadband Price List. NGA usage is measured at the 95th percentile at 15 minute intervals.

Table 29: Cost of Bitstream in the Regional and Urban Markets Port and Usage Charges (and including the SAH for the Regional Market)

	Total Regional Cost	Total Urban Cost	Differential	% Difference
BMB 8Mb Bitstream	20.53	22.44	1.91	9%
BMB 24Mb Bitstream	21.53	23.44	1.91	9%
FTTC Bitstream	22.82	29.46	6.64	29%
FTTH 150 Bitstream	28.17	30.34	2.17	8%
FTTH 500 Bitstream	28.17	30.34	2.17	8%
FTTH Bitstream 1000	33.48	35.65	2.17	6%

- 4.236 Based on Table 27, above, any suggested price ‘premiums’ (a term used by BT) or margins relating to BMB Bitstream and FTTH Bitstream in the two markets are moderate at between 6-9%. At this level, the price ‘premium’ is equivalent to SAH discount, which is a discount that only applies to the Regional WCA Market.
- 4.237 ComReg’s view is that the ‘premium’ for BMB Bitstream in the Urban WCA Market will encourage migration of demand to NG services while the ‘premium’ for FTTH Bitstream may encourage migration to FTTH VUA.
- 4.238 However, there remains a differential of 29% for FTTC Bitstream between the Urban and Regional WCA Markets. For this, there are several factors to consider:
- (a) The FTTC VUA tariff is set at a cost-oriented price level nationally so any FTTC Bitstream ‘premium’ encourages migration to FTTC VUA;
 - (b) In the Urban WCA Market, Eircom’s Ireland’s Fibre Network (‘IFN’) programme will offer current FTTC Bitstream customers an alternative to FTTH. The higher prices for FTTC Bitstream in those EAs may incentivise migration to FTTH Bitstream or FTTH VUA when it becomes available; and
 - (c) There are alternative providers in the Urban Market such as SIRO.
- 4.239 In summary, ComReg disagrees with BT’s analysis and has provided an alternative table with amended calculations.

Revised Urban WCA Market competition assessment findings

- 4.240 In this Section, ComReg has assessed whether competition at the Revised Urban WCA Market, including the Reassigned EAs, is the same as, or sufficiently similar to, competition in the EAs constituting the deregulated 2018 Urban WCA Market, thereby confirming whether it is appropriate to incorporate the 81 Reassigned EAs into the Revised Urban WCA Market.
- 4.241 Having considered the competition assessment approach applied in the 2018 Decision, ComReg’s position is that competitive conditions at the Revised Urban WCA Market are the same as, or sufficiently similar to, competitive conditions on the 2018 Urban WCA Market, as set out in the 2018 Decision. Competition is accordingly likely to be effective on the Reassigned EAs.

4.242 ComReg first carried out a 3CT which suggested that regulation was not, in principle, warranted on the Revised Urban WCA Market. Although not strictly necessary, ComReg then carried out a competition assessment. On the basis of this assessment, ComReg concludes that competition is likely to be effective at the Reassigned EAs, which should be included in the Revised Urban WCA Market. All EAs forming part of the Revised Urban WCA Market should benefit from the findings in respect of the 2018 Urban WCA Market set out in the 2018 Decision.

Revised Regional WCA Market competition assessment findings

- 4.243 In respect of the Revised Regional WCA Market, ComReg's assessment above suggests that the competition assessment in respect of the 2018 Regional WCA Market set out in the 2018 Decision remains valid. Bearing in mind that those EAs forming part of the 2018 Regional WCA Market which now exhibit signs of effective competition (the Reassigned EAs) have been transferred to the Revised Urban WCA Market, ComReg's 3CT assessment suggested that regulation continues to be warranted on the Revised Regional WCA Market. This conclusion is based on the facts that Eircom continues to retain a high market share on the Revised Relevant WCA Market, and that alternative operators have not rolled out NG broadband networks extensively in the footprint of the Revised Regional WCA Market on a commercial basis. This suggests that the market is characterised by structural barriers to entry which inhibit the development of effective competition.
- 4.244 It follows that the competition assessment set out in the 2018 Decision remains valid, although those EAs now form part of a slightly smaller Revised Regional WCA Market. The designation of Eircom with SMP at those EAs constituting the 2018 Regional WCA Market in the 2018 Decision should be retained at those EAs now constituting the Revised Regional WCA Market. ComReg notes, however, that the rollout of NBI on a non-commercial basis in the footprint of the Revised Regional WCA Market may, on a forward-looking basis impact competitive conditions.

5 Withdrawal of Obligations at the Reassigned EAs

Overview

- 5.1 In cases where Eircom has previously been designated with SMP on a relevant market, and accordingly been subject to regulatory obligations, Regulation 27(2) of the Framework Regulations¹⁷⁶ allows ComReg to give reasonable notice to any parties which it considers to be affected by the withdrawal of such obligations.
- 5.2 ComReg is withdrawing existing regulatory obligations as they currently apply in the Reassigned EAs, given its finding that these EAs should be transferred to the Revised Urban WCA Market, and that they are characterised by effective competition. In this respect, existing obligations, other than as set out below, shall be withdrawn on the effective date of this MTA Decision.

Sunset Period

- 5.3 ComReg determined, at paragraph 13.47 of the 2018 Decision and as reiterated at paragraph 5.3 of the Consultation, that, to facilitate an orderly transition to deregulation of the 2018 Urban WCA Market, a six month sunset period was appropriate, starting from the effective date of the 2018 Decision. As set out at paragraph 9.257 of the 2018 Decision, ComReg confirmed that, where the MTA leads to the withdrawal of regulation at EAs, the sunset period will similarly apply at those EAs. During this six month sunset period, as further set out at Section 13 of the 2018 Decision, access to existing WCA services will continue to be maintained at prevailing prices. At the end of this six month sunset period, these obligations will be withdrawn.
- 5.4 The purpose of the sunset period is to give reasonable and sufficient notice to Access Seekers affected by the withdrawal of obligations on Eircom, to facilitate orderly deregulation in the Reassigned EAs. This will allow Access Seekers sufficient time in which to make preparations for changed market circumstances and to preserve continuity in the supply of retail broadband services while, if necessary, procuring alternative supply arrangements (were Eircom to withdraw WCA, or significantly alter its WCA terms and conditions, following deregulation).
- 5.5 The sunset period applies in respect of access to existing lines at the Reassigned EAs forming part of the Revised Urban WCA Market. All other obligations imposed under the 2018 Decision are withdrawn on the effective date of this Decision.

¹⁷⁶ This provision is mirrored at Article 67 of the EECC.

5.6 ComReg considers that the sunset period will facilitate Access Seekers who wish to transition their End Users reliant on WCA in the Reassigned EAs to alternative arrangements, such as services delivered over WLA. The total number of Access Seeker retail broadband subscriptions reliant on WCA in the Reassigned EAs that, absent regulation, could potentially be left without service (in circumstances where Eircom were to withdraw access) totalled [REDACTED]¹⁷⁷ as at Q1 2021. Table 30 below outlines Eircom VUA availability and access in the Reassigned EAs:¹⁷⁸

Table 30: Access to Eircom VUA in the Reassigned EAs, Q1 2021 [REDACTED]

	Access to Eircom VUA at Reassigned EAs	As % of Reassigned EAs
BT	[REDACTED]	[REDACTED]
Vodafone	[REDACTED]	[REDACTED]

Respondents' Views

Sunset period is too short

- 5.7 Vodafone, ALTO and BT all argued that the sunset period proposed in the Consultation is too short, and is not comparable with the sunset period implemented following the 2018 Decision.¹⁷⁹ They argued that ComReg should take into account the fact that the six month sunset period was proposed in late 2016 in the WLA/WCA Consultation, with the 2018 Decision published in late 2018, and the sunset period ending in 2019.
- 5.8 Vodafone argued that the MTA is too short to ensure VUA capability at EAs where SIRO is not present, and that the addition of new, smaller EAs requires significant capital commitment and planning. Vodafone accordingly suggested a sunset period of a minimum of 12 months to allow Access Seekers to plan their investment cycle.
- 5.9 ALTO proposed a minimum sunset period of two years, given the need for Access Seekers to invest in reaching additional VUA sites, in circumstances where regulated upstream products, including CEI, are not available.
- 5.10 ALTO and BT both submitted that the more viable larger EAs have already been served with backhaul, and it becomes less viable to reach the remainder of the EAs. Accordingly, absent regulated upstream supply, including an effective CEI product, the six month sunset period would not provide the necessary time to facilitate investment in reaching additional VUA sites. ALTO and BT claimed that a minimum sunset period of 12 months would be needed to deploy the infrastructure necessary to ensure reliable supply.

¹⁷⁷ The total number of such customers is less than 30,000.

¹⁷⁸ See Annex: 3 for details on calculation of boundaries for the Revised Relevant WCA Markets.

¹⁷⁹ Sky offered no views on the proposed sunset period.

- 5.11 BT also stated that Eircom does not have standard processes for rollout to VUA exchanges in all circumstances, which leads to the implementation of convoluted solutions. BT noted that it had placed an order to rollout to VUA EAs with Eircom in September 2020 and that progress had not been made by Eircom, as of January 2021. BT therefore suggested that it would take 18 months to roll out to certain VUA nodes, arising in large part from Eircom delays.

ComReg's Assessment of Respondents' Views

- 5.12 ComReg does not agree with ALTO, BT, and Vodafone that sunset periods longer than those set out in the 2018 Decision or the Consultation¹⁸⁰ are warranted.

VUA rollout capability

- 5.13 ComReg does not agree that a longer sunset period should be imposed due to the need for Access Seekers to invest in additional VUA capability to serve End Users. ComReg notes that Eircom VUA is available in 76 of the Reassigned EAs on a regulated basis, and SIRO VUA is available in 20 of the Reassigned EAs on a commercial basis. Access Seekers can avail of these services, in addition to WCA provided on a commercial basis. ComReg recognises that there will be some impact on Access Seekers, due to the potential requirement for them to further invest in VUA capability or to migrate customers from Bitstream to VUA where it already has a VUA capability, but that ComReg's decision to deregulate the Reassigned EAs must be based, not on whether Access Seekers must incur such investment expenditure but, rather, whether there is sufficient competition arising from a combination from existing competition together with, as appropriate, potential competition and CBP, as set out at Section 4 above.
- 5.14 ComReg notes, for example, that, during 2016 and 2017, Vodafone switched from purchasing WCA inputs to purchasing VUA, and did so at a significant pace. In circumstances where an Access Seeker is already present at an EA on the basis of WCA, ComReg considers that, where an Access Seeker considers it commercially worthwhile to do so, it would neither be technically difficult, nor take considerable time and effort, for an Access Seeker such as Vodafone to switch its [VODAFONE:] customers in the Reassigned EAs from WCA to WLA, having regard to the sunset period.¹⁸¹ As set out at paragraph 5.17 below, this switch can be accomplished electronically in such circumstances.

¹⁸⁰ ALTO Submission, pages 12-13; BT Submission, page 21; Vodafone Submission, page 7.

¹⁸¹ ComReg data indicate that Vodafone has a VUA presence in [VODAFONE:] of the 81 Reassigned EAs - a figure in excess of 85% of the Reassigned EAs.

- 5.15 BT argued that Eircom does not have standard processes to facilitate VUA rollout in circumstances where an Access Seeker must switch from purchasing WCA to purchasing WLA. Given that [X █████ X] retail broadband subscriptions in the Reassigned EAs rely on WCA, in ComReg's view, there is unlikely to be a large one-off migration of customer orders seeking to move away from Eircom. Even if a substantial one-off migration were to occur, ComReg is of the view that, given the volume of subscribers involved, and Eircom's ongoing regulatory obligations over the lifetime of the sunset period, subscriber migration could be capable of being accomplished without significant disruption.
- 5.16 With regard to the sunset period for existing lines, in order to ensure a reasonable period for migration from WCA to VUA and minimal disruption for End Users, the key steps which an Access Seeker must carry out are to install a WEIL at the relevant exchange, and to procure backhaul. From the End User perspective, the transition should be seamless, and there should be no requirement to, for example, supply new equipment to the End User or agree the scheduling of migrations. ComReg understands that WEIL delivery should take a maximum of 35 working days. Once the Access Seeker takes delivery of WEIL in an exchange and installs the relevant equipment to direct the traffic to its backhaul, the migration process is carried out electronically. ComReg understands that it may take up to three or four months to procure the necessary backhaul to complete the switch from Bitstream to VUA at wholesale level.

Ongoing Eircom obligations

- 5.17 During the sunset period, the obligation on Eircom under section 7(2)(viii) of the WCA Decision Instrument appended to the 2018 Decision to facilitate migrations will continue to have effect as further specified in the Direction to Eircom dated 11 June 2021.¹⁸² This obligation specifically requires Eircom to facilitate migrations between NG or CG WLA and NG or CG WCA in any direction. Accordingly, Eircom will be obliged to facilitate Access Seekers who wish to migrate, including by way of bulk migrations, from WCA to WLA on the Reassigned EAs, during the sunset period. As set out at section 9.3 of the open eir Industry Process Manual,¹⁸³ an intra-operator move from Bitstream to VUA will be treated by open eir as a change ('CHN') order which can be completed electronically.

¹⁸² ComReg 21/61 Direction to Eircom Limited pursuant to Regulation 18 of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 in relation to Migrations.

¹⁸³ "Next Generation Access - Bitstream Plus and Virtual Unbundled Access Industry Process Manual", v21, June 11 2021. Available online at https://www.openeir.ie/wp-content/uploads/2021/06/NGA-IPM-V21_0-Unmarked-11062021.pdf

Eircom migrations capability

- 5.18 As Eircom will no longer be required to supply WCA in the Reassigned EAs following the sunset period (although it may continue to do so on a commercial basis), End Users may need to be migrated to an alternative service. Based on Eircom's capability to process 1,000 orders per operator per working day, migrating current active WCA subscriptions will take a minimum of [X EIRCOM: ██████████ X], hypothetically assuming that Access Seekers migrate all [X EIRCOM: ██████████ X] merchant market WCA subscriptions to retail broadband delivered using VUA inputs, and that Access Seekers avail of the maximum daily migration allocation. This timeline falls within the six month period earmarked for migrations by ComReg. ComReg notes that nothing prevents Access Seekers from starting migrations earlier if they have the capacity available together with the necessary processes to support the migrations at scale.
- 5.19 Each of these orders can be completed electronically, as set out at paragraph 5.17 above. It is therefore reasonable to expect that installation of broadband over alternative infrastructure for these WCA End Users can be completed within the six month sunset period. ComReg accordingly considers that the sunset period for existing lines provides sufficient and adequate notice to SPs, and that it would not be reasonable and proportionate to extend it further.
- 5.20 Accordingly, from a technical and practical perspective, and based on the timing necessary to effect a switch by an Access Seeker from WCA to WLA, ComReg considers that there are no grounds to justify extending the MTA sunset period.

Respondents' Views

Sunset period is too long

- 5.21 Eircom noted that ComReg first signalled deregulation of the WCA market in 2016, and published its WLA/WCA Decision in 2018. Given the time that has elapsed since then, Eircom considered that it would be inappropriate for ComReg to impose a sunset period for deregulation with respect to the Candidate EAs.
- 5.22 Eircom argued that the deregulation arising from the 2018 Decision represented a more significant change to the regulatory regime than the MTA, which, as ComReg recognised in its Consultation, "*do not involve any significant impacts*".¹⁸⁴

¹⁸⁴ As set out at paragraph 6.5 of the WCA MTA Consultation.

The sunset period is an unwarranted regulatory restraint, and the consultation period should suffice as notice

- 5.23 Eircom argued that it would continue to suffer unwarranted regulatory restraints in competitive EAs, and that any imposition of a sunset period would lead to further distortion of an effectively competitive subset of the market, allowing other market players to enjoy a continued regulatory advantage at Eircom's expense.
- 5.24 Eircom considered that a sunset period of six months is unjustified and fails to remove regulation in a timely manner. Eircom therefore argued that,
- (a) the fact that further deregulation was signalled in the 2018 Decision; and
 - (b) the MTA Consultation itself
- effectively served notice of withdrawal of regulation from the Candidate EAs, and that additional time beyond the effective date of the MTA Decision is not justified. In the alternative, Eircom suggested a maximum sunset period of three months.

ComReg's Assessment

- 5.25 ComReg does not agree with Eircom that the MTA consultation period serves as sufficient notice to Access Seekers, such that no sunset period is required. The Consultation includes proposals rather than decisions and it is only at the time of the decision that a determination is made by ComReg regarding its regulatory approach. ComReg rather considers that an adequate notice period is necessary, and that a sunset period of six months' duration is both appropriate and justified. ComReg considers that the reasons it set out in the 2018 Decision to justify a six month sunset period upon the effective date of the 2018 Decision similarly apply in respect of the WCA MTA sunset period.¹⁸⁵
- 5.26 Eircom characterises the sunset period as an unwarranted regulatory restraint distorting an effectively competitive market. ComReg does not share this characterisation and, like other NRAs, considers that sunset periods may be appropriate in circumstances where immediate deregulation of a market – or of part of a market - would impede the capacity of Access Seekers to, where necessary, make alternative arrangements to assure continued service for End Users.

¹⁸⁵ See paragraphs 13.20 to 13.47 of the 2018 Decision.

- 5.27 ComReg does not agree with Eircom that the sunset period should be reduced or, indeed, set aside. Withdrawing all obligations on the effective date of this MTA Decision may not provide sufficient time for Access Seekers relying on WCA in the Reassigned EAs to obtain an alternative source of supply, if necessary. In addition, ComReg notes that the list of Candidate EAs outlined in the Consultation¹⁸⁶ is preliminary only, and that this Decision outlines the final list of Reassigned EAs, as set out at Annex: 3. The final list of Reassigned EAs differs from the list of Candidate EAs and has not previously been made publicly available. Hence, it does not afford Access Seekers sufficient time to facilitate an orderly transition towards the deregulation of the Reassigned EAs, in accordance with the boundaries of the relevant geographic markets.
- 5.28 The 2018 Decision made clear¹⁸⁷ that the MTA would be followed by a sunset period of equivalent duration to the sunset period in respect of the 2018 Decision. As such, no notice can reasonably be considered to have been given to Access Seekers affected by the withdrawal of obligations, and to do so would be at clear variance with what ComReg said it would do in the 2018 Decision (and, therefore, industry expectations).

The MTA sunset period should be shorter than the 2018 Decision sunset period, as proposed in the RFTS/FACO Consultation

- 5.29 Eircom argued that the approach which ComReg took in its RFTS/FACO Consultation, which recognised that *“changes to regulation resulting from the Mid-term Assessment will not be at the same scale as those which will follow the removal of regulation”*¹⁸⁸ should also be applied to the WCA MTA. In its RFTS/FACO Consultation, ComReg proposed that a shorter sunset period should apply following the completion of the MTA. Eircom considered that this approach is also appropriate in the context of the WCA MTA and that, logically, the MTA sunset period must be shorter than the original Decision sunset period as, otherwise it would be neither proportionate nor justified, as required by law.
- 5.30 Eircom also argued that it expected that Access Seekers would have anticipated further deregulation. In addition, Eircom considered that the Consultation appeared to presume that Eircom would behave unreasonably, requiring Access Seekers to need to abruptly move to alternatives. Given that the Candidate EAs are already effectively competitive, such a strategy would not make commercial sense, as Eircom would have every incentive to retain its wholesale customers.

¹⁸⁶ See Appendix 6 of the Consultation.

¹⁸⁷ At paragraph 12.396.

¹⁸⁸ As set out at paragraph 11.8 of the RFTS/FACO Consultation.

ComReg's Assessment

- 5.31 ComReg disagrees that the MTA sunset period must logically be shorter than the 2018 Decision sunset period. In particular, ComReg considers that the six month sunset period is both proportionate and justified. Eircom stated in its Submission that, *“As noted by ComReg the changes arising as a result of the MTA ‘do not involve any significant impacts’”* to support its contention. However, this is misleading, as Eircom has quoted only part of the relevant text.
- 5.32 The full text set out at paragraph 6.5 of the Consultation notes that the regulatory changes proposed therein *“do not involve any significant impacts that would lead to a different conclusion in relation to the appropriateness of removing remedies at those EAs, compared to the position set out in the 2018 Decision in respect of the EAs constituting the 2018 Urban WCA Market.”* Thus, the discussion of impacts was in the context of supporting a similar approach to the approach taken in the 2018 Decision and did not, as Eircom suggests, provide support for taking a different approach to that taken in the 2018 Decision in terms of reducing the length of the sunset period, nor could any such inference, in ComReg's view, reasonably be drawn.
- 5.33 ComReg also notes that the length of the WCA MTA, at six months, is shorter than the equivalent sunset period ComReg had proposed in its RFTS/FACO Consultation in respect of existing PSTN, ISDN FRA, and ISDN PRA lines (eighteen months). The sunset period is also more limited than the FACO sunset period, insofar as it applies to existing lines only, while the FACO sunset period proposal applies to both existing and new lines for the first nine months of the eighteen month sunset period.
- 5.34 ComReg proposed in the RFTS/FACO Consultation that the sunset periods arising from any further deregulation after the proposed FACO MTA should be shorter than those following the initial RFTS/FACO Decision.¹⁸⁹ ComReg's reasoning in respect of FACO is that, by the time of the proposed MTA Decision Date, SPs will already have installed or procured alternative Managed VoIP capability for providing FACO services following the proposed removal of regulation from the Urban FACO Markets. In addition, changes to regulation resulting from the MTA would not be at the same scale as those which would follow the proposed removal of regulation from the Urban FACO Markets. This is because the number of SB-WLR lines in the Regional FACO Markets is lower and any changes to regulation arising from the MTA would therefore mean the volume of switching to Managed VoIP would also be likely to be substantially lower.

¹⁸⁹ As set out in detail in Section 11.2 of the RFTS/FACO Consultation.

5.35 This reasoning does not, however, similarly apply to the provision of WCA at the Reassigned EAs. In the first instance, the volume of work which an Access Seeker must carry out at an individual exchange is not reduced due to the fact that other exchanges have already been deregulated. In particular, an Access Seeker must still install a WEIL and procure backhaul – a process which may take up to three or four months, as set out at paragraph 5.16 above. Thus, the proposed FACO MTA sunset period is shorter than that proposed in the RFTS/FACO Consultation in respect of the RFTS/FACO Decision sunset period because an Access Seeker will only need to engage in an incremental workload at an EA. This is not the case in respect of WCA, as the level of workload at an individual exchange is not contingent on existing levels of deregulation.

ComReg has provided insufficient justification

5.36 Eircom argued that ComReg had not provided sufficient justification that the sunset period is appropriate in the specific context of the MTA, as required by Article 16(3) of the Framework Directive:

“Where a national regulatory authority concludes that the market is effectively competitive, it shall not impose or maintain any of the specific regulatory obligations referred to in paragraph 2 of this Article. In cases where sector specific regulatory obligations already exist, it shall withdraw such obligations placed on undertakings in that relevant market. An appropriate period of notice shall be given to parties affected by such a withdrawal of obligations” [emphasis added by Eircom in its submission].

5.37 Eircom further considered that the proposed measures rely on general rather than specific reasons to justify the proposed duration, and that ComReg had failed to demonstrate how an eventual faster lifting of SMP obligations could cause harm to consumers in EAs that have been deemed effectively competitive.

ComReg’s Assessment

5.38 ComReg first notes that Article 16(3) of the Framework Directive has been repealed by means of Article 125 EECC and no longer has effect. The relevant provision in Irish law remains Regulation 27(3) of the Framework Regulations read in light of the similar provision of EC legislation which is now Article 67(3) EECC, which requires NRAs to provide notice to parties affected by the withdrawal of SMP obligations *“defined by balancing the need to ensure a sustainable transition for the beneficiaries of those obligations and end-users, end-user choice, and that regulation does not continue for longer than necessary”*.

5.39 ComReg considers that the absence of a notice period – in the form of the sunset period described above – for the Reassigned EAs would endanger the capacity of Access Seekers to assure the transition of their End Users to alternative arrangements for the provision of retail broadband.

5.40 ComReg's finding that the Reassigned EAs are no longer susceptible to regulation is based on the availability of direct or indirect constraints offered by other POs; given the number of lines affected by deregulation, however, it is essential to ensure that sufficient time is provided to SPs so that they can migrate away from Eircom WCA and offer an adequate substitute to their End Users.

ComReg's Final Position

5.41 ComReg remains of the view that, insofar as WCA is concerned, a six month sunset period for existing lines is appropriate and proportionate, having regard to the need to allow Access Seekers sufficient time to finalise and implement a migration strategy, and that they may not be in a position to start migrating End Users immediately following this Decision. The sunset period is, in ComReg's view, appropriate and provides reasonable and sufficient notice to affected Access Seekers, while at the same time protecting End Users from potential unnecessary disruption to their services.

5.42 ComReg's position is that a six month sunset period is appropriate, starting from the effective date of this MTA Decision. During this period, Access to existing WCA products, services, facilities or Associated Facilities provided by Eircom shall be provided at prices no higher than those prevailing for such products, services, facilities or Associated Facilities on the effective date of this Decision for a period of six months.

5.43 During this sunset period Eircom is not obliged to meet new requests for WCA inputs on a regulated basis. Eircom may, at its discretion, meet any such new requests on a purely commercial basis.

6 Regulatory Impact Assessment

- 6.1 A Regulatory Impact Assessment ('**RIA**') is a detailed consideration of the likely effect of proposed new regulation, or changes to existing regulation. A RIA seeks to establish if such proposals are necessary and proportionate and, in doing so, identifies any possible effects which might result from their implementation.
- 6.2 Where necessary, a RIA identifies alternative regulatory options and, ultimately, establishes whether a proposed regulation is likely to have the desired impact. It is a structured approach to the development of policy, and analyses the impact of the proposed regulation, and other regulatory options, on stakeholders. Appropriate use of a RIA ensures that the most effective regulatory option is identified.
- 6.3 The ultimate aim of conducting a RIA of proposed regulation is to ensure that the measures which are implemented are appropriate, proportionate and justified.
- 6.4 A RIA was conducted in the 2018 Decision in respect of the analysis of the 2018 Relevant WCA Markets. This Decision therefore:
- (a) Transfers the Reassigned EAs from the Revised Regional WCA Market to the Revised Urban WCA Market;
 - (b) Makes a finding that no undertaking has SMP on the Revised Urban WCA Market; and
 - (c) As a consequence, removes all regulatory obligations imposed by means of the 2018 Decision at those EAs, subject to a six month sunset period in the case of access obligations only.
- 6.5 ComReg's view is that these changes do not involve any significant impacts that would lead to a different conclusion in relation to the appropriateness of removing obligations at those EAs, compared to the position set out in the 2018 Decision in respect of the EAs constituting the 2018 Urban WCA Market.
- 6.6 ComReg's view is that conditions of competition at the Reassigned EAs are similar to conditions of competition in EAs constituting the 2018 Urban WCA Market, in respect of which ComReg made no finding of SMP. Accordingly, ComReg transfers the Reassigned EAs to the Revised Urban WCA Market. Therefore, ComReg considers that the RIA conducted for the 2018 Decision is equally valid in the context of this MTA.
- 6.7 A finding that there is insufficient evidence of SMP at the Revised Urban WCA Market – which consists of the 2018 Urban WCA Market, together with the Reassigned EAs - implies that the Reassigned EAs are no longer susceptible to *ex ante* regulation and, therefore, regulation is no longer warranted on that market.

- 6.8 In the absence of a finding of SMP at a duly-defined market, ComReg is not entitled to impose any SMP regulatory obligations on that market. Therefore, ComReg's options in respect of the Revised Urban WCA Market are limited to the timing of the withdrawal of existing obligations. ComReg has set out its views in respect of the sunset period at Section 13 of the 2018 Decision, and at Section 5 above.

Respondents' Views

- 6.9 Neither Vodafone nor Sky provided submissions on the RIA.
- 6.10 ALTO and BT both disagreed with the RIA proposals on the basis that it overlooked what they considered to be wider supply issues in upstream markets as further outlined below. Those issues, combined with the deregulation of the Candidate EAs, would, in their views, lead to Access Seekers facing obstructions from Eircom in accessing VUA. BT and ALTO indicated that, if the upstream supply issues were resolved and these upstream inputs proved efficient, then they would be more accepting of ComReg's proposals.
- 6.11 While Eircom agreed that the nature of the changes proposed in the Consultation did not involve any significant impacts for other stakeholders, it considered that the RIA was not fit for purpose and was deficient in a number of respects, which are also set out below.

CEI Market Failure

- 6.12 BT and ALTO considered that market failures in the provision of CEI pursuant to obligations imposed on Eircom in the WLA market effectively prevent Access Seekers from accessing upstream facilities (specifically, VUA) that would enable efficient access. They asserted that it would take a very significant period of time to resolve the CEI market failure, and that ComReg must therefore act urgently.

ComReg's Assessment

- 6.13 BT, in its Submission, argued that the WCA MTA should address the failures which, in its view, had arisen in the provision of CEI on the upstream WLA market, and that new remedies should be introduced to resolve this issue. The scope of the MTA, as set out in the 2018 Decision, is specifically restricted to the reassessment of the boundaries of, and conditions of competition on, the Relevant WCA Markets. Accordingly, the issue of upstream remedies falls outside the scope of this exercise. ComReg assumes BT was referring to the use of CEI Access for the purpose of building own backhaul to Eircom Aggregation Nodes for the purpose of purchasing VUA. ComReg notes that the MTA takes account of SPs' actual upstream purchases of VUA to supply downstream WCA services (such as in the case of BT). To the extent that issues with upstream access to CEI inhibit access to VUA, this is therefore accounted for in the MTA. That aside, ComReg notes that it is open to an SP to raise a dispute with ComReg in respect of any potential or alleged non-compliance by Eircom with its obligations with respect to CEI Access, including those CEI obligations set out in the 2018 Decision. ComReg notes that it is investigating a number of compliance issues with respect to Eircom's supply of CEI access and has recently issued a direction to Eircom concerning duct access, in which ComReg indicated that it was not satisfied that Eircom's offer of access to CEI, including duct access, allows effective access to other operators.¹⁹⁰ Other investigations are ongoing in relation to duct access.
- 6.14 In this regard, ComReg is currently investigating a number of compliance issues with respect to CEI access, and has also recently issued notices in this regard.¹⁹¹ Finally, ComReg notes that, following the publication of the 2020 Recommendation, there is scope for NRAs to define separate markets for access to physical infrastructure access. Accordingly, ComReg has scope to consider CEI in the context of Physical Infrastructure Access ('PIA'). In this regard, ComReg considers that issues regarding CEI at the upstream WLA level can be further examined as part of the PIA market review consultation which, as set out in its Action Plan, ComReg intends to issue in Q2 2022.¹⁹²

¹⁹⁰ Information Notice, Direction to Eircom Limited with respect to Access to CEI under ComReg Decision D10/18, [ComReg Document 21/60](#) and Information Notice Direction to Eircom Limited with respect to Access to CEI under ComReg Decision D10/18, including Sub-Duct Self-Install Duct Access, [ComReg Document 21/64](#).

¹⁹¹ For example, Notification of finding of non-compliance issued to Eircom Limited. Information Notice 21/19, 08 March 2021. <https://www.comreg.ie/media/2021/03/Information-Notice-Compliance-Case-1389-FINAL.pdf>

¹⁹² <https://www.comreg.ie/media/2021/07/Annual-Action-Plan-Ye-30-06-2022-as-at-1-July-2021.pdf>

Over-deregulation of leased lines and backhaul viability

- 6.15 BT and ALTO asserted that ComReg had over-deregulated the leased lines market, which limited the ability of Access Seekers to use what, they argued, were effectively upstream regulated services to provide backhaul to exchanges.
- 6.16 BT argued that it is dependent on Eircom leased line backhaul to reach many VUA sites which would otherwise be non-viable. Accordingly, in BT's view, since these sites are not viable to reach, VUA is not genuinely available to Access Seekers at these sites, and the service provided by Eircom is WCA, not WLA.
- 6.17 Deregulation of WCA at the Candidate EAs therefore potentially curtails the ability of some Access Seekers to provide wholesale broadband services in the same footprint as Eircom. Due, in BT's view, to errors in ComReg's 2020 Wholesale High Quality Access ('**WHQA**') Decision,¹⁹³ some Access Seekers have assured access to VUA by means of Eircom commercial dark-fibre backhaul networks, but this is not the case for other Access Seekers, and it is now highly unlikely that they will be offered this opportunity.

ComReg's Assessment

- 6.18 The issues of leased lines and backhaul viability have been addressed at Section 3 and Section 5 above. In its assessment, ComReg concluded that discussion of the outcome of the partial deregulation of the leased lines market is out of scope of the MTA with respect to the WCA markets. In respect of backhaul viability, ComReg notes that it has engaged in a two-stage geographic assessment exercise which is designed, on the basis of a set of objective criteria, to identify geographic differences in conditions of competition between EAs. As noted above, the assessment undertaken takes account of SPs' actual upstream purchases of VUA to supply downstream WCA services (such as in the case of BT). To the extent that any backhaul issues result in an SP not purchasing VUA at an Aggregation Node, these are accounted for. Additionally, where, in ComReg's considered view, the provision of WCA at an EA is unlikely to be subject to competitive constraints, that EA is assigned to the Revised Regional WCA Market, and Eircom will continue to be subject to SMP obligations at those EAs. ComReg also notes that, pursuant to the 2018 Decision, Eircom is obliged to offer WLA on a regulated basis to Access Seekers nationwide.

¹⁹³ Market Review, Wholesale High Quality Access at a Fixed Location, [ComReg Document 20/06](#), Decision D03/20, January 2020 ('**2020 Wholesale High Quality Access Decision**').

- 6.19 For these reasons, ComReg concludes that the proposed deregulation of the Reassigned EAs will not curtail the ability of Access Seekers to provide wholesale broadband in the same footprint as Eircom. ComReg further notes that it is not the function of the market review process to ensure that all EAs are commercially viable for Access Seekers, and that it is for each Access Seeker to determine on an individual basis whether it is commercially viable to serve a particular EA or not. ComReg then takes account of this in its assessment.

WLA margin squeeze enforcement

- 6.20 BT and ALTO argued that ComReg must ensure it can enforce the WLA margin squeeze, as the potential for such breaches appears high.

ComReg's Assessment

- 6.21 ComReg notes that, as with the issue of CEI on the WLA market, the WLA MST falls outside the scope of this Decision, and is described in detail in the 2018 Pricing Decision and the 2018 Bundles Decision.

NBP rollout and geographic assessment criteria

- 6.22 Eircom expressed concerns regarding ComReg's failure to adequately consider the effect of NBP rollout on the competitive dynamics of the WCA market over the remaining period of the market review.
- 6.23 Eircom noted that the NBP contract is now in place. As such - and given that NBI has communicated its deployment plans to ComReg and commenced rollout at the end of 2020 – the level of ambiguity or uncertainty regarding the potential impact of the NBP award has reduced, if not fully dissipated.
- 6.24 Eircom therefore expressed concern that ComReg had not designated NBI as a PO, for the reasons set out in detail in response to Question 1.
- 6.25 As markets continue to evolve, including the number of markets susceptible to *ex ante* regulation, Eircom argued that the piecemeal and ill-sequenced review of remedies would likely result in regulatory failure.
- 6.26 Eircom reiterated its concerns that the design of the MTA, the conservative geographic criteria and ComReg's apparent focus on completed rollout rather than foreseeable developments would not allow for an accurate recognition of the competitive dynamics in the WCA market.
- 6.27 Eircom considered that any forward-looking assessment by ComReg could not ignore the effect that NBI rollout will have on the WCA market over the remaining market review period. ComReg has not considered the impact that this will have on the overall market, particularly in the context of efficient migration and the green and digital transitions, which are key priorities of the European Commission's 2020-2024 legislative cycle.

ComReg's Assessment

6.28 In respect of Eircom's comments on NBI rollout, ComReg has set out in detail its views in respect of how NBI should most appropriately be taken into account as part of the MTA at Section 3 and Section 4, in particular whether it should be designated as an additional PO. ComReg also notes that it has addressed the other issues raised by Eircom in the main body of the text of this Decision above.

Review of the WLA/WCA markets and new market developments

6.29 As discussed in its response to Question 1, Eircom argued that the inflexibility of the geographic assessment criteria is demonstrative of the need to review the WLA and WCA markets in their entirety rather than relying on a mechanistic re-application of the geographic criteria midway through the market review period.

6.30 Eircom asserted that the conditions determined over four years ago do not remain suitable for an assessment in 2020 and Decision in 2021, particularly given that NBI rollout will have a significant impact on both the WLA and WCA markets. This, in Eircom's view, leaves a period of two years where market conditions have not been fully considered in respect of the 2018 Decision and its original three-year horizon.

6.31 Eircom noted that the five year review period established by the EECC is a maximum period within which an analysis shall be carried out. There is no impediment to ComReg carrying out a review within a shorter period - particularly when there are exceptional circumstances at hand, such as the material impact that the NBP will have on relevant markets.

6.32 Eircom further noted that Article 68(6) of the EECC requires NRAs to "*consider the impact of new market developments, such as in relation to commercial agreements, including co-investment agreements, influencing competitive dynamics.*" Eircom considers that the award of the NBP contract and the commencement of NBI rollout constitute new market developments in the relevant markets that will influence competitive dynamics. Eircom therefore asked ComReg to consider that the award of the NBP contract and the commencement of NBI route preparation/survey work and rollout constitute major developments in the relevant markets, to the extent that they warrant commencing a market review now, well in advance of the end of 2023.

ComReg's Assessment

- 6.33 ComReg has already set out its views in respect of NBI and the appropriateness of assessing NBI presence on a forward-looking basis at Section 3 and Section 4 above. In respect of Eircom's argument that the MTA should be set aside in favour of an early and full review of the WLA and WCA Markets, ComReg notes that it made clear in the 2018 Decision that it would issue a MTA within the lifetime of the market review period, and has accordingly provided a high degree of regulatory certainty to market participants in this regard. Were ComReg to cease the MTA exercise despite having indicated that it would carry out an MTA in 2018, and having then issued a Consultation in 2020, this would undermine the certainty provided to the market. In any event, the period between market reviews is five years, as set out in Article 67 of the EECC.
- 6.34 ComReg also notes that, were it to do so, this would result in an additional time lag on any further deregulation of the WCA market, noting that a full review would require a further consultation to be issued and a different decision to then subsequently be issued. Accordingly, rather than deregulating the Reassigned EAs in 2021, the impact of a move to carry out a full WLA and WCA market review would likely be to delay the implementation of any further deregulatory measures. For these reasons, ComReg does not consider that it is appropriate or necessary to abandon the WCA MTA process and, instead, commence a new WLA and WCA market review. This is *a fortiori* the case, given that the full WLA and WCA market review process is likely to commence shortly after the conclusion of the WCA MTA process, given the lead-in times to consultation which are typically the case in in-depth and complex market reviews.

Sunset period

- 6.35 Eircom stated that ComReg had not considered the possibility of reducing or foregoing the sunset period in the specific context of the MTA decision, given the deregulatory signals that have been provided to the market.
- 6.36 Eircom considered that ComReg has also failed to consider, in the context of the RIA, whether a shorter sunset period would be appropriate in the specific context of deregulation arising as a result of the MTA.

ComReg's Assessment

- 6.37 ComReg has addressed the issue of the sunset period to be applied on foot of the MTA in detail at Section 5 above, wherein it justifies its decision not to reduce or forego a sunset period.

ComReg's Final Position

- 6.38 In respect of the Revised Regional WCA Market, on which ComReg retains the SMP designation imposed on Eircom by means of the 2018 Decision, the RIA set out in the 2018 Decision continues to apply having regard to the assessment in this Section 6.

7 Next Steps

- 7.1 ComReg has set out its position in the preceding sections regarding its analysis of the Revised Relevant WCA Markets, and has today published its Decision on its publicly available website, www.comreg.ie.
- 7.2 Eircom Limited (trading as eir), which is subject to the regulatory obligations set out in the Decision Instrument appended to this Decision, is hereby notified of this Decision.

NON-CONFIDENTIAL

Annex: 1 Decision Instrument

1 STATUTORY POWERS GIVING RISE TO THIS DECISION INSTRUMENT

- 1.1 This Decision Instrument (“Decision Instrument”) is made by the Commission for Communications Regulation (“ComReg”) and relates to the market for wholesale central access provided at a fixed location as identified by the European Commission in the 2014 Recommendation and analysed by ComReg in ComReg Decision D10/18.
- 1.2 This Decision Instrument is made:
- (i) Pursuant to and having regard to Sections 10 and 12 of the Communications Regulation Act 2002 (as amended); Regulation 6(1) of the Access Regulations and Regulation 16 of the Framework Regulations;
 - (ii) Pursuant to and having regard to the EECC;
 - (iii) Having taken the utmost account of the 2014 Recommendation, the 2020 Recommendation, the Explanatory Notes and the SMP Guidelines;
 - (iv) Having complied with Ministerial Policy Directions, where applicable pursuant to Section 13 of the Communications Regulation Act 2002 (as amended);
 - (v) Having consulted with the Competition and Consumer Protection Commission, pursuant to Regulation 27 of the Framework Regulations and Article 67 of the EECC;
 - (vi) Having notified the draft measure and the reasoning on which the measure is based to the European Commission, BEREC and the national regulatory authorities in other EU Member States pursuant to Regulation 13 of the Framework Regulations and Article 32 of the EECC and having taken utmost account of any comments made by these parties;
 - (vii) Pursuant to Regulations 25, 26 and 27 of the Framework Regulations and Regulations 8 and 18 of the Access Regulations; and
 - (viii) Having regard to the analysis and reasoning set out in ComReg Decisions D10/18 and D[•/•].
- 1.3 The provisions of ComReg Decision D[•/•] and ComReg Decision D10/18 shall, where appropriate, be construed consistently with this Decision Instrument. For the avoidance of doubt, however, to the extent that there is any conflict between a decision instrument dated prior to the Effective Date (as defined in Section 8 of this Decision Instrument) and this Decision Instrument, this Decision Instrument shall prevail.

PART I - GENERAL PROVISIONS (SECTIONS 2 TO 4 OF THE DECISION INSTRUMENT)

2 DEFINITIONS

In this Decision Instrument, capitalised terms used and not defined herein are as defined in the WCA Decision Instrument:

“ComReg Decision DXX/XX” means ComReg Document No. XX/XX entitled “Mid-term Assessment, Regional Wholesale Central Access (WCA) Market; Re-application of geographic assessment criteria set out in ComReg Decision D10/18. Response to Consultation and Final Decision”, dated XX/XX/2021 [Final Decision Document];

“Decision Instrument” means this decision instrument which is made pursuant to *inter alia* Regulations 8 and 18 of the Access Regulations;

“EECC” means the European Electronic Communications Code established by Directive 2018/1972 of 11 December 2018 which entered into force on 20 December 2020;

“Effective Date” means the date set out in Section 8 of this Decision Instrument;

“Eircom” means Eircom Limited, a company incorporated in Jersey (Number 116389), registered as a Branch in Ireland (Number 907674), with an Irish registered Branch Office at 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24, D24 HX03, and its subsidiaries and any related companies, and any Undertaking which it owns or controls, and any Undertaking which owns or controls Eircom Limited, and its successors and assigns. For the purpose of this Decision Instrument, the terms “subsidiary” and “related company” shall have the meaning ascribed to them in the Companies Act 2014;”

“WCA Decision Instrument” means the decision instrument at Appendix 21 of ComReg Decision D10/18.

3 SCOPE AND APPLICATION

- 3.1 This Decision Instrument is binding upon Eircom and Eircom shall comply with it in all respects.
- 3.2 This Decision Instrument applies to Eircom in respect of activities falling within the scope of the Relevant Markets as defined in Section 4.2 of the WCA Decision Instrument as amended by this Decision Instrument.
- 3.3 This Decision Instrument withdraws certain obligations previously imposed upon Eircom, as more particularly set out in Sections 5 and 6 of this Decision Instrument.

4 MODIFICATIONS TO THE WCA DECISION INSTRUMENT

- 4.1 This Decision Instrument relates to the market for Wholesale Central Access provided at a fixed location, as identified in the 2014 Recommendation and as analysed by ComReg in ComReg Decision D10/18.
- 4.2 For the reasons set out in ComReg Decision D[•/•], Section 4.2 of the WCA Decision Instrument, which reads as follows:

“Pursuant to Regulation 26 of the Framework Regulations and in accordance with the 2014 Recommendation, the Explanatory Note and taking the utmost account of the SMP Guidelines, in accordance with the principles of competition law, the Relevant Markets defined in this Decision Instrument are:-

- (i) the wholesale market for central access in urban areas as more particularly defined in accordance with the criteria set out in Section 9 of ComReg Decision D10/18 and includes those Exchange Areas as listed in Appendix: 11 of ComReg Decision D10/18 which is referred to in this Decision Instrument as the Urban Wholesale Central Access market or the ‘Urban WCA Market’;*
- (ii) the wholesale market for central access in regional areas as more particularly defined in accordance with the criteria set out in Section 9 of ComReg Decision D10/18 and includes those Exchange Areas as listed in Appendix: 11 of ComReg Decision D10/18 which is referred to in this Decision Instrument as the Regional Wholesale Central Access market or the ‘Regional WCA Market’;”*

shall be deleted and replaced with the following:

“Pursuant to Regulation 26 of the Framework Regulations and in accordance with the 2014 Recommendation, the Explanatory Note and taking the utmost account of the SMP Guidelines, in accordance with the principles of competition law, the Relevant Markets defined in this Decision Instrument are:-

- (i) the wholesale market for central access in urban areas as more particularly defined in accordance with the criteria set out in Section 9 of ComReg Decision D10/18 and includes those Exchange Areas as listed in A.3.3 of Annex 3 of ComReg Decision D[•/•] which is referred to in this Decision Instrument as the Urban Wholesale Central Access market or the ‘Urban WCA Market’;*

- (ii) *the wholesale market for central access in regional areas as more particularly defined in accordance with the criteria set out in Section 9 of ComReg Decision D10/18 and includes those Exchange Areas as listed in A.3.4 of Annex 3 of ComReg Decision D[•/•] which is referred to in this Decision Instrument as the Regional Wholesale Central Access market or the ‘Regional WCA Market’;*”

4.3 The definition of “Eircom” in the WCA Decision Instrument, which reads as follows:

*“**“Eircom”** means Eircom Limited, and its subsidiaries and any related companies, and any Undertaking which it owns or controls, and any Undertaking which owns or controls Eircom Limited, and its successors and assigns. For the purpose of this Decision Instrument, the terms “subsidiary” and “related company” shall have the meaning ascribed to them in the Companies Act 2014;”*

shall be deleted and replaced with the following:

*“**“Eircom”** means Eircom Limited, a company incorporated in Jersey (Number 116389), registered as a Branch in Ireland (Number 907674), with an Irish registered Branch Office at 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24, D24 HX03, and its subsidiaries and any related companies, and any Undertaking which it owns or controls, and any Undertaking which owns or controls Eircom Limited, and its successors and assigns. For the purpose of this Decision Instrument, the terms “subsidiary” and “related company” shall have the meaning ascribed to them in the Companies Act 2014;”*

4.4 For the avoidance of doubt, the WCA Decision Instrument (as amended by this Decision Instrument) remains in full force and effect unless and until it is otherwise amended, revoked or replaced.

PART II – WITHDRAWAL OF SMP OBLIGATIONS

5 WITHDRAWAL OF SMP OBLIGATIONS

5.1 ComReg hereby withdraws existing regulatory obligations at the Exchange Areas listed in A.3.2 of Annex 3 of ComReg Decision D[•/•]. Subject to clause 7.3 below, the obligations are withdrawn on the Effective Date.

PART III - OPERATION AND EFFECTIVE DATE

6 STATUTORY POWERS NOT AFFECTED

6.1 Nothing in this Decision Instrument shall operate to limit ComReg in the exercise and performance of its statutory powers or duties conferred on it under any primary or secondary legislation (in force prior to or after the Effective Date of this Decision Instrument).

7 MAINTENANCE OF OBLIGATIONS

- 7.1 Unless expressly stated otherwise in this Decision Instrument, all obligations and requirements contained in Decision Notices and Directions made by ComReg, applying to Eircom, and in force immediately prior to the Effective Date of this Decision Instrument, continue in force and Eircom shall comply with the same.
- 7.2 If any Section(s), clause(s), or provision(s), or portion(s) thereof, contained in this Decision Instrument is(are) found to be invalid or prohibited by the Constitution, by any other law or judged by a court to be unlawful, void or unenforceable, that(those) Section(s), clause(s), or provision(s), or portion(s) thereof shall, to the extent required, be severed from this Decision Instrument and rendered ineffective as far as possible without modifying the remaining Section(s), clause(s), or provision(s), or portion(s) thereof, of this Decision Instrument, and shall not in any way affect the validity or enforcement of this Decision Instrument or other Decision Instruments.
- 7.3 Pursuant to Regulation 18 of the Access Regulations and Regulation 27(3) of the Framework Regulations and in accordance with Article 67(3) of the EECC, an appropriate notice period of six (6) months from the Effective Date shall be provided to affected parties and during that period Eircom shall continue to provide Access to Current and Next Generation Bitstream in the Exchange Areas listed at A3.2 of Annex 3 of ComReg Decision D[••] at prices consistent with the current draft of the Broadband Price List.

8 EFFECTIVE DATE

- 8.1 The Effective Date of this Decision Instrument shall be the date of its notification to Eircom and it shall remain in force until further notice by ComReg.

ROBERT MOURIK

COMMISSIONER

THE COMMISSION FOR COMMUNICATIONS REGULATION

THE XX DAY OF XXXX

Annex: 2 WCA Geographic Market Assessment under Step 2

Introduction

A 2.1 In the 2018 Decision, ComReg outlined its approach to the market definition process in respect of the 2018 Relevant WCA Geographic Markets, applying two assessments, designated for convenience at Section 3 above as Step 1 and Step 2.¹⁹⁴ Step 1 applied a set of five quantitative geographic assessment indicators (the ‘**Indicators**’), using data obtained from SPs, as set out at Table 1 above:

- (a) Geographic differences in entry conditions over time;
- (b) Variation in the number and size of potential competitors;
- (c) Distribution of market shares;
- (d) Evidence of differentiated pricing or marketing strategies; and
- (e) Geographical differences in demand characteristics.

A 2.2 If Step 1 is satisfied, then the geographic assessment proceeds to Step 2. This Annex updates Step 2 using the criteria set out in the 2018 Decision and repeated at Table 3 above, and is structured as follows:

- (a) Framework for Step 2 (paragraphs A 2.3 to A 2.31);
- (b) Step 2 analysis (paragraphs A 2.32 to A 2.50); and
- (c) Overall Conclusions on Step 2 (paragraphs A 2.51 to A 2.48).

Framework for Step 2

A 2.3 ComReg applies its geographic assessment criteria at the level of the EA. ComReg considers that the EA is the most suitable unit of assessment for the reasons set out at paragraphs A10.7 to A10.29 of the 2018 Decision. The framework for assessing the boundaries of these markets follows these steps:

- (a) **Establishing criteria for assessing competitive conditions:** ComReg sets out a number of criteria for assessing competitive conditions in the appropriate geographic areas (see paragraphs A 2.5 to A 2.26 below), and
- (b) **Analysis of criteria:** ComReg examines factors inputting to the criteria, which assist in distinguishing geographic areas characterised by different conditions of competition (see paragraphs A 2.27 to A 2.50 below).

¹⁹⁴ See paragraph 3.6 above.

A 2.4 The rationale for the selection of this assessment framework is discussed below.

Establishing Criteria for assessing competitive conditions

A 2.5 In the 2018 Decision, ComReg set out a range of cumulative criteria which it used to determine the competitive conditions which characterised EAs, with these summarised in Table 3 above.

Minimum Number of POs

A 2.6 As noted above, SPs have unbundled a number of Eircom EAs to provide retail and/or wholesale services by means of LLU, Line Share, and VUA, with VUA now being the principle wholesale product in use. A number of these SPs are relatively small in terms of their subscriber base and coverage, and do not supply wholesale access products.¹⁹⁵

A 2.7 In some cases, these smaller SPs only provide services in limited geographic areas. Such SPs are therefore unlikely to cause an appreciable impact on competitive conditions between EAs.

A 2.8 In carrying out this assessment of the WCA geographic markets and in line with the 2018 Decision, ComReg only includes those SPs that have a sufficiently significant presence on the Revised Relevant WCA Markets (either directly as a demand or supply-side substitute, or in posing an effective indirect constraint). Only those SPs having a reasonably-sized national (or regional) market share are capable of causing an appreciable impact on competitive conditions between EAs, as set out at Table 7 above. ComReg designates such SPs as '**Primary Operators**', or '**POs**'. ComReg's assessment is forward-looking, and it has also taken into consideration the planned network presence and rollout plans of POs, where it is clear and credible. Accordingly, ComReg limits its assessment of competition in EAs to those POs that can operate in the Revised Relevant WCA Markets absent regulation, and that have a sizable national (or regional) presence. ComReg has considered whether NBI should be designated as a PO in Section 3 above and for the reasons set out therein it does not consider this to be appropriate.

A 2.9 ComReg indicated in the 2018 Decision that, over the period of the current market review, additional SPs could potentially fulfil the conditions for being designated as a PO. To this end, ComReg, as part of this Mid-term Assessment, has considered whether it is appropriate to designate any additional POs and, as set out at paragraphs 3.43 to 3.85 above, has concluded that there are insufficient grounds to justify doing so, having regard to the conditions for designation set out at Table 7.

A 2.10 Having regard to the above conditions, ComReg designates the following SPs as POs, which are the same POs as were designated in the 2018 Decision:

¹⁹⁵ For example, Colt and Magnet purchase LLU and/or Line Share from Eircom in the Relevant WLA Market, but have unbundled a small number of EAs and do not supply wholesale access products.

- (a) BT;
- (b) Eircom;
- (c) SIRO;
- (d) Virgin Media; and
- (e) Vodafone.

A 2.11 Each of these POs is present on a network that is capable (or that ComReg considers is prospectively capable within a reasonable timeframe, and without incurring significant sunk costs) of providing WCA and/or retail broadband services using its own network inputs, or inputs procured via the Relevant WLA Market.

Conclusion on Primary Operators

A 2.12 Having regard to the above analysis, ComReg's position is that only those SPs which are likely to have a reasonably-sized market share are capable of exerting an effective competitive constraint on other competitors. Such SPs, described as Primary Operators, are those listed at paragraph A 2.10 above.

Interpreting the Cumulative Criteria

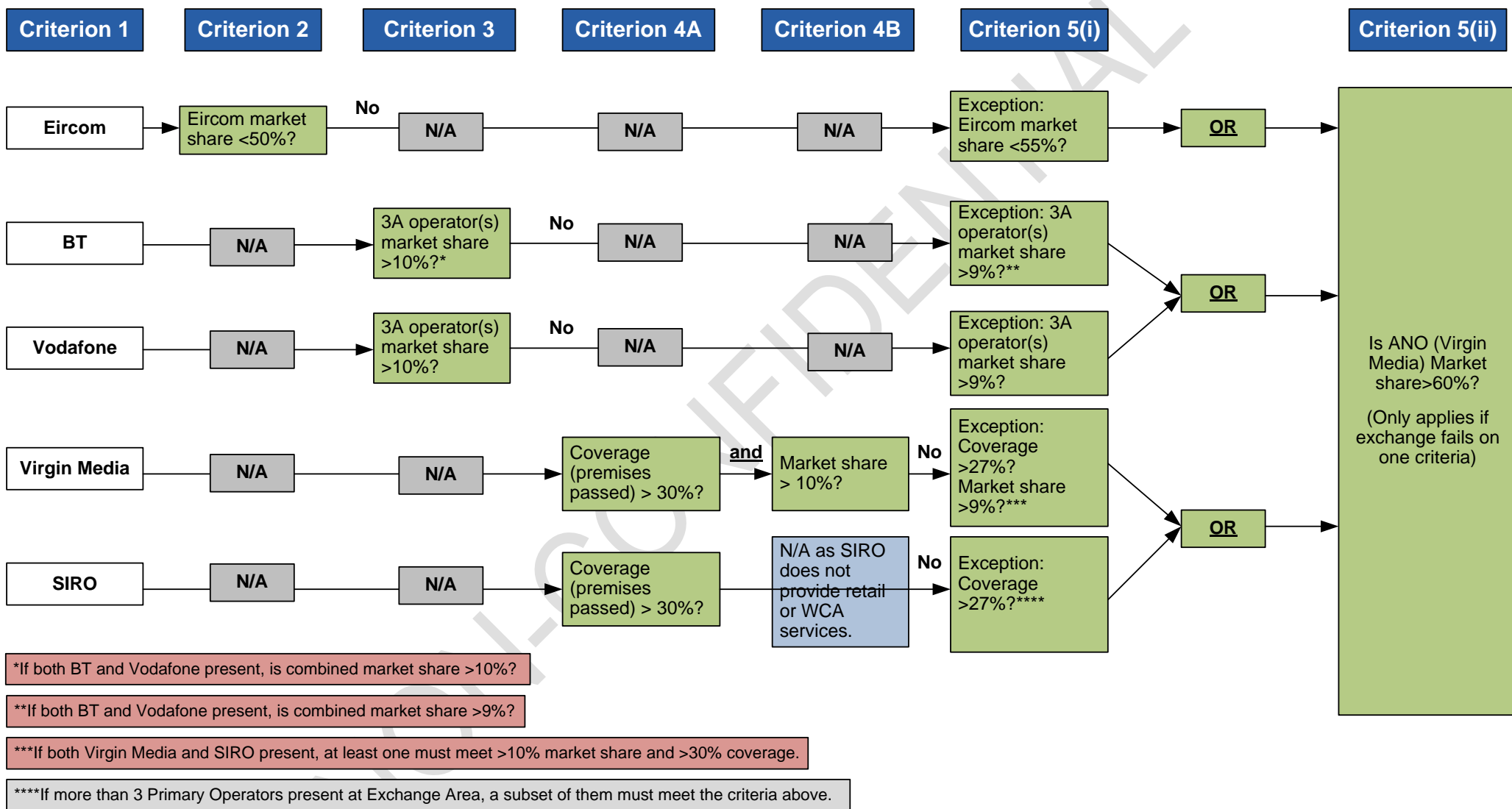
A 2.13 Not all criteria in Table 3 above may be applicable at an EA, and this will depend on the POs present at an EA. For example, Criteria 4A and 4B are only to be applied where an Alternative Network Operator ('**ANO**'), as defined at paragraph 1.10 above, is present. Where no ANO is present, the analysis proceeds on the basis of Criteria 1, 2, 3 and 5(i). Similarly, Criterion 3 only applies where a PO making use of WLA inputs is present. Otherwise, the analysis proceeds on the basis of Criteria 1, 2, 4A, 4B, and 5.

A 2.14 Thus, all five (1 to 4B) cumulative criteria only apply in circumstances where at least one ANO and at least one PO making use of WLA inputs are present at the EA. Figure A2.1 below gives an overview of how the cumulative criteria are applied.

A 2.15 As ComReg has identified five POs, the criteria to be applied at an EA will vary depending on whether a PO making use of WLA inputs is present (BT or Vodafone), in which case Criterion 3 is applied, and whether an ANO (Virgin Media or SIRO) is present, in which case Criteria 4A and 4B,¹⁹⁶ and – if necessary – 5(ii) are applied.

¹⁹⁶ As set out at paragraph A 2.24 below, Criterion 4B currently only applies to Virgin Media, although this could, in principle, alter in future if another ANO commenced provision of retail broadband or WCA.

Figure A2.1: Application of Cumulative Criteria



- A 2.16 Criterion 1 establishes the number of POs present at any given EA (noting that, to meet the Criterion, a minimum of three POs must be present).
- A 2.17 Criterion 2 (and the exception to Criterion 2 under Criterion 5(i)) applies only to Eircom. Criterion 2 is met if Eircom's market share at the EA is less than 50%. Where the EA has passed all other relevant criteria, an exception is made under Criterion 5(i) if Eircom's market share is between 50% and 55%.
- A 2.18 Criterion 3 applies to POs using LLU or VUA inputs purchased in the Relevant WLA Market. If BT or Vodafone is present at an EA, ComReg examines whether its market share is at least 10%; if both BT and Vodafone are present at the EA, ComReg assesses whether their combined market share is at least 10%. If either of these conditions are met, the EA is considered to satisfy Criterion 3.
- A 2.19 Criterion 3 applies to a PO providing retail broadband services to End Users using inputs from the Relevant WLA Market. For the avoidance of doubt, this definition includes POs which provide retail broadband services either:
- (a) Directly to End Users; and/or
 - (b) Indirectly to End Users via a WLA-based WCA service that is sold to other retail SPs.
- A 2.20 This implies that BT, which sells a WCA-based Bitstream service to Sky and Vodafone using WLA inputs falls to be assessed under Criterion 3.
- A 2.21 ComReg notes that, in calculating market shares (absent regulation), the total market comprises all Eircom self-supply (i.e. Eircom retail subscribers), Eircom wholesale (WLA and WCA), Vodafone's total subscriptions, BT's total subscriptions, Virgin Media total subscriptions and SIRO subscriptions.
- (a) Eircom market share (absent regulation) – total Eircom self-supply (i.e. Eircom retail subscribers) plus Eircom wholesale (excluding WLA to BT and Vodafone, and WCA used by BT/Vodafone can be converted to WLA where applicable);
 - (b) BT market share – total BT purchases of WLA plus purchases of WCA that can be converted to WLA where BT has a WLA presence at an EA (i.e. LLU for CG Bitstream or VUA for NG Bitstream);
 - (c) Vodafone market share - total Vodafone purchases of WLA plus purchases of WCA that can be converted to WLA where Vodafone has a WLA presence at an EA (i.e. VUA for NG Bitstream);
 - (d) Virgin Media market share – total active subscriptions provided over Virgin Media's network; and

- (e) SIRO market share – total active subscriptions provided over SIRO’s network, as appropriate.¹⁹⁷

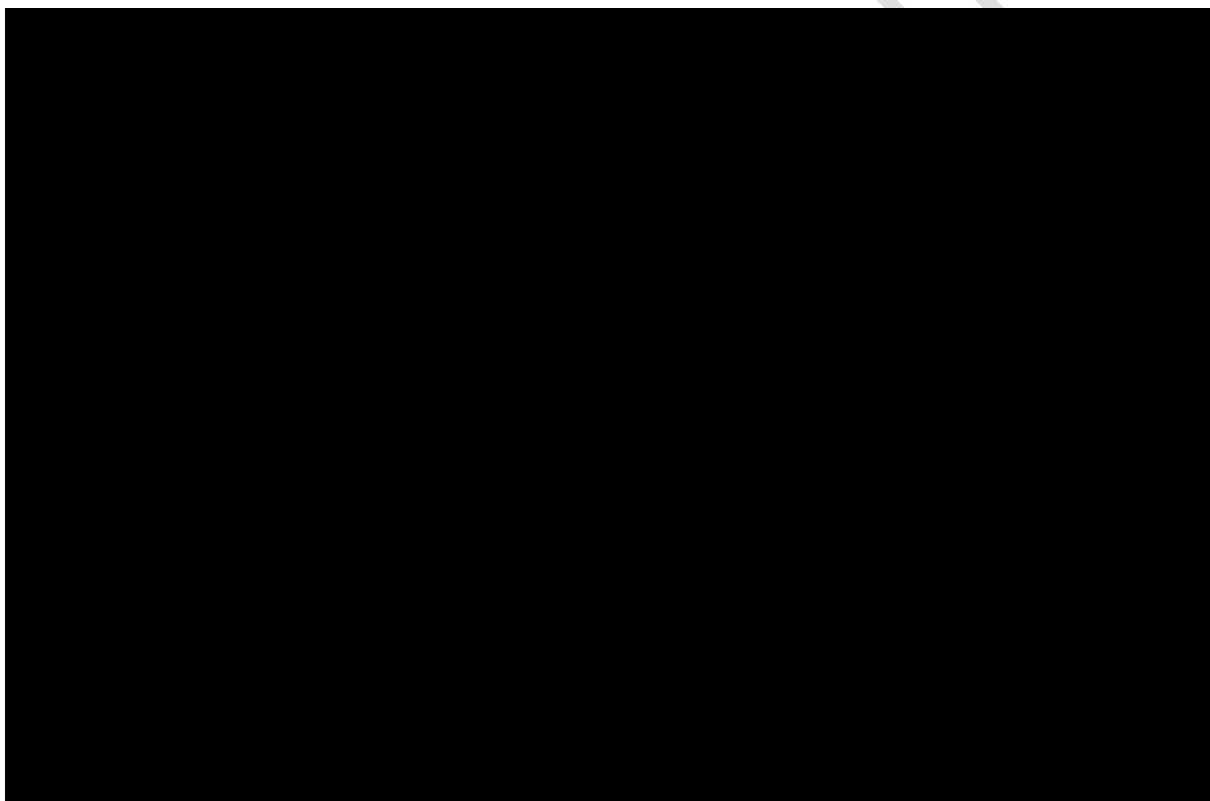
- A 2.22 ComReg notes that, in calculating market shares, it must take care to avoid instances of double-counting, and therefore applies the designation principles set out at paragraphs 9.329 to 9.331 of the 2018 Decision. Thus, since SIRO is included in the Revised Relevant WCA Markets by virtue of its position as a credible hypothetical supply-side substitute, its WLA sales to Vodafone are assigned to Vodafone, which is included in the Revised Relevant WCA Markets by virtue of the indirect constraint it generates at the retail level. Should SIRO actually commence offering WCA, then such services would be assigned to SIRO for market share calculation purposes.
- A 2.23 Criteria 4A and 4B apply only to ANOs (Virgin Media and SIRO). Criterion 4A considers whether, at a given EA, Virgin Media or SIRO have total coverage (in terms of premises passed) of more than 30%. This is computed by taking the total number of premises passed by such networks in that EA as a proportion of the total number of premises (residential and business) in that EA. Where both Virgin Media and SIRO are present at an EA, it will suffice if just one of their individual network coverages exceeds 30%.
- A 2.24 Criterion 4B considers whether the ANO has a market share of more than 10% in that EA. Currently, this criterion only applies to Virgin Media, which offers a retail broadband service. It does not apply to SIRO, which is active on the Relevant WLA Market, but does not offer WCA or retail broadband services. However, were SIRO to commence providing either a WCA or a retail broadband service, where both Virgin Media and SIRO were present at an EA, it would suffice if the sum of their individual market shares exceeded 10%.
- A 2.25 For an ANO to be considered a sufficient competitive constraint at the EA, it must meet both Criteria 4A and 4B (in the case of Virgin Media) or Criterion 4A only (in the case of SIRO).
- A 2.26 Criterion 5 includes a number of exceptions which may apply if an EA fails one of Criteria 2 to 4B. For example, if an EA fails Criterion 2 but passes all other relevant criteria, the EA may pass, if it is eligible for exemption under either of the stipulations set out at Criterion 5. If, under Criterion 2, Eircom’s market share is greater than 50% at the EA, but Criteria 1 and 3 have been met, then an exception is made under Criterion 5(i) if Eircom’s market share is less than 55%, or under Criterion 5(ii) if an ANO has coverage at that EA of at least 60%.

¹⁹⁷ ComReg notes that SIRO is not active in the WCA Market and therefore does not have any recorded subscriptions. It does, however, provide VUA services to Access Seekers such as Vodafone and BT which enables them to provide WCA services to end users. For this reason, SIRO services are accounted for in Vodafone and BT’s market share figures.

Analysis of Geographic Criteria

A 2.27 Figure A2.2 below presents Eircom's average market share (absent regulation in the Revised Relevant WCA Markets) for all 1,049 EAs in the 2018 Regional WCA Market, having regard to differences in the number of POs providing services at each EA. Eircom is the only PO present at all EAs, and has a market share of 100% in EAs where other POs have neither unbundled the EA, nor built an alternative network. As can be seen, Eircom's market share falls as the number of competitors present increases – thus suggesting differences in competitive conditions across different EAs, having regard to increases in the number of POs present.

Figure A2.2: 2018 Regional WCA Market - Average Eircom Market Share and Number of POs Q1 2021 [X REDACTED X]¹⁹⁸



A 2.28 Table A2.31 below provides a breakdown of the number of EAs in the 2018 Regional WCA Market by the number of POs present. This indicates that Eircom likely faces greater competition at a number of EAs in terms of the number of POs, either directly, or indirectly, arising from the retail broadband market (and is thus suggestive of differing competitive conditions).

¹⁹⁸ Eircom market share, for the following numbers of POs at EAs: 1 PO – 91-100%, 2 POs – 81-90%, 3 POs – 61-70%, 4 POs – 41-50%, 5 POs – 31-40%, Average – 61-70%.

Table A2.31: 2018 Regional WCA Market - POs and Premises by EA, Q1 2021¹⁹⁹

Number of POs	No. of EAs (N=1,049)	Premises Coverage
1	246	193,663
2	242	230,152
3	468	507,412
4	77	179,862
5	16	62,177

A 2.29 In terms of ANO coverage, ComReg has sought to establish the extent of Virgin Media and SIRO network coverage. Virgin Media's network is present (at any coverage level > 0%) in [REDACTED] EAs in the 2018 Regional WCA Market as of Q1 2021, with a total network coverage of [REDACTED] in these EAs.²⁰⁰

A 2.30 Table A2.32 below shows the relationship between Virgin Media's network coverage and its market share on the 2018 Regional WCA Market. Virgin Media's market share increases with network coverage. For example, there are [REDACTED] EAs where Virgin Media's coverage is between 50% and 75% and in these EAs, its market share averages [REDACTED].²⁰²

Table A2.32: 2018 Regional WCA Market - Virgin Media Network Coverage by EA Q1 2021 [REDACTED]

Virgin Media	< 25%	25-50%	50-75%	>75%	Total
Number of EAs ²⁰³	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Market Share (%)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

A 2.31 As noted above, the SIRO network has a limited but growing footprint, with its coverage by EA outlined in Table A2.33 below. As with Virgin Media, SIRO's market share rises with network coverage. While ComReg has included the SIRO network in its analysis (on the basis of supply-side substitution), it is not active on the 2018 Regional WCA Market, and therefore has no market share of its own. The market shares at Table A2.33 below are Access Seeker retail broadband market shares reliant on SIRO WLA inputs. The SIRO network, at Q1 2021, has passed 374,137 premises.²⁰⁴ The SIRO network is present in [REDACTED] EAs in the 2018 Regional WCA Market, with a total network coverage of [REDACTED] in these EAs.

Table A2.33: 2018 Regional WCA Market - SIRO Network Coverage by EA Q1 2021 [REDACTED]

SIRO	< 25%	25-50%	50-75%	>75%	Total
Number of EAs ²⁰⁶	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Market Share (%) ²⁰⁷	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Step 2 analysis of differences in competitive conditions

- A 2.32 Since the publication of the 2018 Decision in November 2018, ComReg has obtained further data from POs on a quarterly basis relating to:
- (a) Network Maps;
 - (b) Coverage and Rollout Plans; and
 - (c) Wholesale and retail broadband subscriber figures at EA level.
- A 2.33 For the avoidance of doubt, and following the principles set out at paragraphs 9.329 to 9.331 of the 2018 Decision, SIRO is not currently active on the 2018 Relevant WCA Markets, or on the retail broadband market. Accordingly, SIRO services purchased by Vodafone are assigned for assessment purposes to Vodafone, which purchases WLA from SIRO in order to provide retail broadband services. These services are capable of generating indirect competitive constraints on the 2018 Regional WCA Market (and the 2018 WCA Markets more generally).
- A 2.34 As POs that both purchase WCA and WLA services from Eircom essentially follow the same EA topology as Eircom itself, there is limited explanatory or additional benefit in mapping these PO shares and coverage.
- A 2.35 Using the inputs described above, ComReg applied the Step 2 criteria to each EA in the 2018 Regional WCA Market. ComReg has mapped the Virgin Media and SIRO footprints onto an EA map to allow subscriber and market share figures to be compared and/or allocated to other POs' subscriber and market share figures. The result of this overall analysis is outlined below.

¹⁹⁹ [X EIRCOM: ██████████ X]

²⁰⁰ Network coverage is defined as the total number of premises passed by the Virgin Media network divided by the total number of premises in the EAs. Virgin Media is present at (40 - 60) EAs in the 2018 Regional WCA Market, with total network coverage of (1 - 40%).

²⁰¹ 50-100.

²⁰² 25-30%.

²⁰³ The number of EAs in all four quartiles ranges from 0 to 100%.

²⁰⁴ ESB Annual Report 2020, at p.13. Available online at https://esb.ie/docs/default-source/investor-relations-documents/esb-annual-financial-results-2020.pdf?sfvrsn=12f907f0_2.

²⁰⁵ SIRO is present at 100-150 EAs, with total network coverage in the range of 31-40%.

²⁰⁶ The number of EAs in all four quartiles ranges from 0 to 100%.

²⁰⁷ Market share: <25%: 0-10%, 25-50%: 0-10%, 50-75%: 11-20%, >75%, 31-30%.

Table A2.34: Application of Criteria for Assessing Competitive Conditions by Exchange Area on WCA Markets

EAs meeting Criteria	n	Subscriptions	Premises
2018 Decision – Urban	154	809,006	1,061,911
Q1 2021 – Revised Urban	235	959,577	1,300,311
EAs not meeting Criteria	n	Subscriptions	Premises
2018 Decision - Regional	1,049	529,769	1,143,977
Q1 2021 – Revised Regional	968	438,482	971,213

A 2.36 The most recent data (Q1 2021) show that 235 EAs met all applicable Criteria, and therefore exhibit competitive conditions which are appreciably different from the remaining 968 EAs.

A 2.37 The Step 2 analysis suggests that the number of EAs falling into the Revised Urban WCA Market has increased since the publication of the 2018 Decision. At each iteration of the assessment, the number of EAs falling into the Revised Urban WCA Market has increased. This has largely been driven by the decline over time in Eircom market share at these EAs (consequently passing Criterion 2), facilitated by uptake of VUA services by POs making use of WLA inputs. By investing in backhaul facilities, WLA POs have been able to also grow market share, consequently increasing the number of EAs passing Criterion 3. Uptake of VUA services has also been driven by expansion of Eircom and SIRO's respective FTTP networks. Since Q4 2017, SIRO has added approximately [§< SIRO: ██████████²⁰⁸ ██████████ ██████████ ██████████ ██████████ §<], while the Eircom FTTP network, which passed 675,000 premises as of June 2021,²⁰⁹ has added in excess of 181,000 FTTP premises since Q2 2020. Some of the growth in EAs in the Revised Urban WCA Market is also attributable to expansion in Virgin Media's network coverage, which has increased by [§< VM: ██████████ §<]²¹⁰ premises since Q4 2017. Approximately 20% of this increase in coverage is located in the Revised Regional WCA Market, while the remainder is in the Revised Urban WCA Market.

A 2.38 Between the assessment carried out for the 2018 Decision (data as at Q4 2017) and the assessment as at Q1 2021, ComReg adds 81 Reassigned EAs to the 2018 Urban WCA Market (now the Revised Urban WCA Market when included). ComReg has assessed several quarters of data since the 2018 Decision, as illustrated below. In line with market dynamics and expanded roll out, additional EAs meeting the criteria are added to the 2018 Urban WCA Market each quarter.

²⁰⁸ 200,000-250,000.

²⁰⁹

https://www.eir.ie/opencms/export/sites/default/.content/pdf/IR/presentations/2020_2021/eir_Q4_FY21_results_presentation.pdf

²¹⁰ 50,000-100,000.

Decline in number of Reassigned EAs, compared to Candidate EAs

- A 2.39 As indicated above, the number of Candidate EAs which ComReg proposed in the Consultation to move to the Proposed Revised Urban WCA Market was 82. However, the number of Reassigned EAs which ComReg moves by means of this Decision to the Revised Urban Market is 81. ComReg notes that the 81 Reassigned EAs do not include all of the EAs in the original figure of 82 Candidate EAs which was presented in the 2020 Consultation. The reasons for this change are set out below.
- A 2.40 **55** of the Reassigned EAs were also Candidate EAs in the Consultation. The status of these EAs has not changed between the Consultation (based on Q2 2020 data) and this Decision (based on Q1 2021 data).
- A 2.41 **26** of the Reassigned EAs were assigned to the Proposed Revised Regional WCA Market at the time of the Consultation, having failed one or more relevant criteria (in some cases marginally), based on Q2 2020 data. Based on Q1 2021 data, these EAs now pass all relevant criteria and, accordingly are assigned to the Revised Urban WCA Market. In the case of one of these 26 EAs, Criterion 3 failed by more than 10% at the time of the Consultation, but failed by less than 10% in Q1 2021, and is therefore saved by the Criterion 5(i) exception. In two cases, Criterion 2 failed by more than 10% at the time of the Consultation, but now passes without requiring the application of an exception criteria in Q1 2021, and in 23 cases, Criterion 2 failed by more than 10% at the time of the Consultation, but failed by less than 10% in Q1 2021, and was therefore saved by the Criterion 5(i) exception.
- A 2.42 **27²¹¹** of the Candidate EAs now fail the Step 2 assessment and are therefore assigned to the Revised Regional WCA Market. There are a number of reasons for this re-designation, as set out below.

²¹¹ ANR, BIR, BND, BSE, CHT, CNP, CSL, LGA, MRW, NRS, NWT, PAN, TUM, WAL, YHL, BDA, JNN, KHA, STM, BLR, BYS, KLC, MDN, NNH, WXA and WOL.

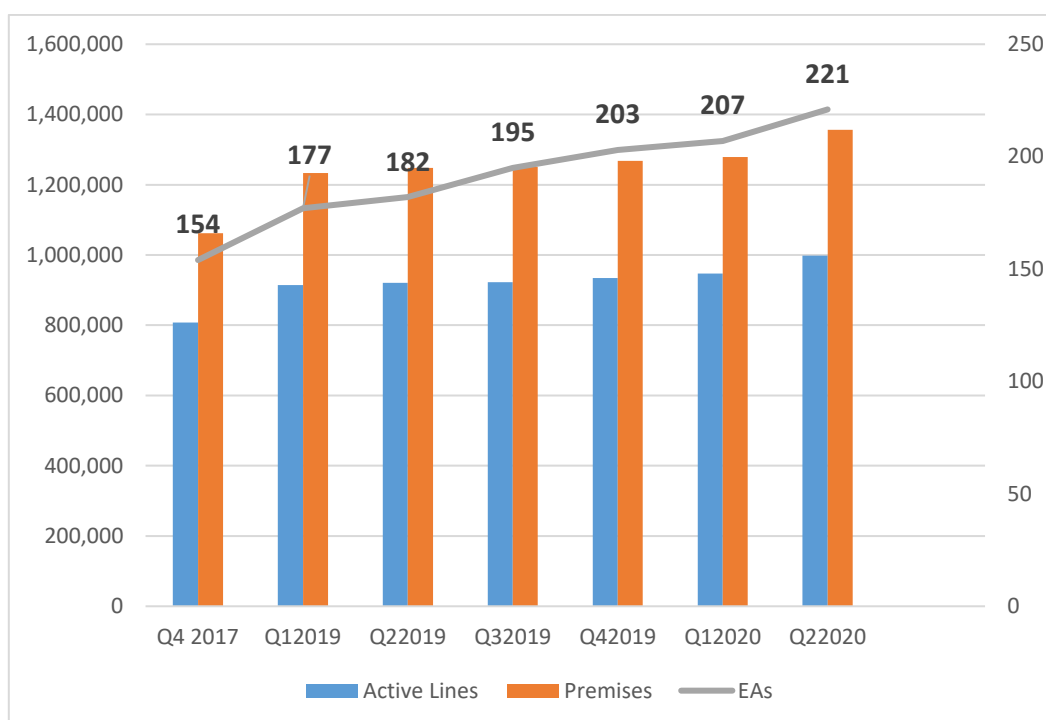
- A 2.43 **15** of these **27** EAs are accounted for by a correction to BT data which leads to BT being removed as a PO at those EAs. In its Submission, BT indicated that it was not present for VUA access at [X BT: ■ X]²¹² identified Candidate EAs. Accordingly, to the extent that BT was providing WCA at these EAs, it would be on the basis not of upstream WLA purchases, but of the re-sale of WCA purchases from Eircom. This meant that the Step 2 assessment criteria were no longer satisfied by BT. ComReg therefore reassessed the application of the Step 2 Criteria at these EAs, re-checked and validated data sources, and accounted for instances where BT did not make WLA purchases at an EA. In certain instances, for example, it appeared that BT had a very low number of VUA customers at an EA which were served from a different Agg Node than the Agg Node typically serving that EA. Having carried out this exercise at the EAs in question, ComReg's analysis concluded that [X BT: ■ X] EAs identified by BT no longer passed all relevant criteria. However, the remaining EAs continued to pass all relevant criteria, even if BT was not counted as part of the Step 2 Criteria (for example, Criterion 1 continues to pass because at least 3 POs were present at an EA, even excluding BT, and Criterion 3 no longer passed on the basis of BT, but passed on the basis of Vodafone).
- A 2.44 A further **5** EAs are accounted for by instances where BT was not, in fact, present for VUA purposes for the reasons set out in the paragraph above, but BT did not identify these specific EAs in its Submission. These EAs only became apparent upon further assessment of data provided to ComReg by BT. Removing BT from these EAs caused Criterion 1 to fail, or Criterion 2 to fail when BT's market share was more appropriately assigned to Eircom.
- A 2.45 In **6** instances the Consultation applied the exception criteria (Criterion 5(i), Criterion 5(ii), and the n-1 exception) in ways not intended by the 2018 Decision, either by applying more than one exception to an EA, or by applying the n-1 exception across both Criteria 4A and 4B. An EA can only benefit from a single exception and multiple exceptions cannot be applied to an EA.²¹³ Similarly, the n-1 exception can only be applied to a single failing criterion, and not across multiple failing criteria.²¹⁴ Applying the exception criteria in strict accordance with the 2018 Decision causes these EAs to now fail the Step 2 assessment.
- A 2.46 In the case of **1** small EA (in terms of premises) [X ■ X], Eircom increased its market share over the two time periods, leading to the EA to fail Criterion 2, based on Q1 2021 data, having passed Criterion 2, based on Q2 2020 data.

²¹² 21-30.

²¹³ As set out at Table 29 of the 2018 Decision, which indicates that exemption Criteria 5(i) and 5(ii) cannot both be applied, and can also only be applied where one of Criteria 2, 3, 4A or 4B fails.

²¹⁴ As set out at paragraphs 9.333(b) of the 2018 Decision.

Figure A2.3: Outputs of Assessments Q1 2019 to Q1 2021²¹⁵



A 2.47 Table A2.35 below presents figures for market shares for each of the POs in the 2018 Regional WCA Market and the Revised Regional WCA Market. Eircom’s share in the retail market was [redacted] EIRCOM: [redacted] %²¹⁶ in Q4 2017 in the footprint of the 2018 Regional WCA Market, and in Q1 2021 this share is estimated to decrease to [redacted] EIRCOM: [redacted] %²¹⁷ on the Revised Regional WCA Market as retail broadband customers who are served by SPs using WCA inputs are, in ComReg’s view, likely to switch back to Eircom to retain services (with this being consistent with the methodology adopted in the 2018 Decision). It is also important to note that the market shares are using data from two different data points and in differing numbers of EAs (2018 Regional WCA Market v. Q1 2021 Revised Regional WCA Market), so a full like-for-like comparison is not possible – the table is shown as a broad illustration of market dynamics. Nevertheless, the table illustrates the key point, which is that, in the footprint of the Revised Regional WCA Market, competitive conditions, as measured in specific by Eircom market share in the provision of WCA, have not substantially altered from Q4 2017 to Q1 2021.

²¹⁵ ComReg did not collect data on an EA basis in 2018, while developing a new data collection system.

²¹⁶ 71-80%.

²¹⁷ 61-70%.

Table A2.35: PO Retail Market Shares (Absent regulation) in the 2018 Regional WCA Market and Revised Regional WCA Market [X REDACTED X]

	Eircom	Virgin Media	BT	Vodafone	Total Active Subs.	% of Total Active Subs.
Q4 2017 ²¹⁸	[X █████]	[X █████]	[X █████]	[X █████]	529,769	39.60%
Q1 2021 ²¹⁹	[X █████]	[X █████]	[X █████]	[X █████]	445,567	31.36%

A 2.48 Table A2.36 below presents the overall outcome of applying the Step 2 criteria for assessing competitive conditions by EA within the footprint of the 2018 Regional WCA Market, and reassigning the Reassigned EAs.

Table A2.36: Application of Criteria for Assessing Competitive Conditions by Geographic Area – Q1 2021

	Number of EAs	Premises in EAs	Subscriptions in EAs
Revised Urban WCA Market	235	1,300,311	959,577
Revised Regional WCA Market	968	971,213	438,482

A 2.49 Table A2.36 above suggests that there are likely to be differing competitive conditions across two separate geographic areas – comprised of those EAs that meet all relevant Criteria, and those that do not. ComReg therefore groups EAs into two areas:

- (a) The **Revised Urban WCA Market**: The 235 EAs where the relevant criteria have, as applicable, been met, consisting of:
 - 154 EAs assigned to the 2018 Urban WCA Market by means of the 2018 Decision, to which are added
 - 81 Reassigned EAs²²⁰ which ComReg transfers from the 2018 Regional WCA Market to the Revised Urban WCA Market on the basis of the analysis in this Decision; and
- (b) The **Revised Regional WCA Market**: The 968 EAs where the relevant criteria have, as applicable, not been met, consisting of:
 - 1,049 EAs assigned to the 2018 Regional WCA Market by means of the 2018 Decision, from which are subtracted

²¹⁸ Market shares (n=1,049): Eircom (71-80%), Virgin Media (0-10%), BT (0-10%), Vodafone (11-20%).

²¹⁹ Market shares (n=968): Eircom (61-70%), Virgin Media (0-10%), BT (0-10%), Vodafone (11-20%).

²²⁰ As set out at paragraph 1.15 above, 'Reassigned EAs' refers to the 81 EAs which ComReg assigns to the Revised Urban WCA Market by means of this Decision. 'Candidate EAs' refers to the 82 EAs which ComReg proposed in the Consultation to assign to the Proposed Revised Urban WCA Market on the basis of an earlier analysis.

- 81 Reassigned EAs which ComReg transfers from the 2018 Regional WCA Market to the Revised Urban WCA Market on the basis of the analysis in this Decision.

A 2.50 The Reassigned EAs are set out in Annex: 3 of this Decision.

Overall Conclusions Step 2

A 2.51 Having regard to the analysis above, Step 2 suggests that there are likely to be two separate Revised Relevant WCA Geographic Markets, namely:

- (a) The **Revised Urban WCA Geographic Market**, being those 235 EAs where all relevant criteria have been met; and
- (b) The **Revised Regional WCA Geographic Market**, being those 968 EAs where all relevant criteria have not been met.

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Annex: 3 Boundaries of the Revised Relevant WCA Markets

A 3.1 ComReg groups EAs into two areas:

- (a) The **Revised Urban WCA Market**: EAs where the applicable criteria have been met; and
- (b) The **Revised Regional WCA Market**: EAs where the applicable criteria have not been met.

A 3.2 ComReg transfers the following 81 Reassigned EAs from the 2018 Regional WCA Market to the Revised Urban WCA Market:

ATD, BAO, BDN, BGV, BOF, BPN, BRT, BSZ, BUA, CAE, CCH, CGM, CHH, CHR, CIL, CLE, CLH, CLN, CLS, CLY, CMR, CMS, CNW, COU, COV, COY, CUE, CWT, DEZ, DGL, DLK, DSN, DVA, ERL, FBK, FES, FFD, FMY, GLF, INH, JWL, KBY, KGD, KLE, KLO, KSN, KTK, KWH, LBO, LEG, LEX, LKY, MBC, MBG, MER, MMK, MNT, MSN, MUG, MWY, MYL, NAL, NCV, NTC, NTF, PTW, RBK, RCL, RLH, RTH, SBE, SNO, STY, TOE, TRM, TRR, TTN, VMT, WGL, WST and WXD.

A 3.3 Accordingly, the following 235 EAs are contained within the Revised Urban WCA Market:²²¹

A 3.4 ABE, ADW, AGN, AKW, ASG, ASM, ASQ, ATD, ATH, ATP, AUV, BAO, BAR, BAX, BBH, BDN, BDT, BEE, BFF, BGV, BLA, BLB, BLI, BLP, BNC, BNN, BOF, BOM, BPN, BRI, BRN, BRT, BSZ, BUA, CAB, CAE, CCE, CCH, CEE, CEL, CGA, CGI, CGM, CHD, CHF, CHH, CHR, CIL, CKC, CKH, CLD, CLE, CLH, CLK, CLM, CLN, CLS, CLT, CLX, CLY, CMR, CMS, CNW, COU, COV, COY, CRA, CRL, CRT, CRW, CSA, CSW, CTY, CUE, CUS, CWD, CWJ, CWT, DAH, DBC, DBN, DBT, DDK, DDM, DEZ, DGL, DGS, DLA, DLK, DNU, DOM, DSN, DVA, DYX, EFD, ENS, EPT, ERL, ETY, FBK, FES, FFD, FLH, FMY, FNG, FOX, GAL, GLF, GMR, GRS, GRY, HPD, HSQ, HYD, INH, JWL, KBK, KBY, KGD, KIC, KIH, KIK, KIL, KLE, KLM, KLN, KLO, KMC, KMO, KNY, KSH, KSN, KTK, KWH, LBO, LCN, LEG, LEX, LKD, LKY, LMK, LND, LOD, LPT, MAH, MBC, MBG, MBT, MDV, MER, MFR, MGR, MHZ, MLW, MMK, MMT, MNK, MNS, MNT, MSN, MTK, MUG, MVN, MVW, MWY, MYL, NAL, NAS, NCV, NEP, NIN, NMN, NTC, NTF, NUT, NWL, PAL, PGS, PLT, PMK, PRP, PTW, QKR, QVE, RBK, RCL, RCR, RLH, RMS, ROC, ROM, RSL, RTD, RTH, RUS, SAN, SAP, SBE, SBK, SGO, SHN, SHP, SKL, SKS, SLA, SLS, SND, SNH, SNO, SRD, SRL, STN, STY, THS, TLH, TLM, TLT, TOE, TOG, TRE, TRM, TRR, TTN, TWV, TYC, UGM, VMT, WGL, WHI, WLW, WPK, WRD, WST, WTD, WXD.

A 3.5 The following 968 EAs remain within the Revised Regional WCA Market:

²²¹ ComReg notes that, based on Eircom's data, there are 1,203 exchanges nationally, consisting of 1,189 EAs, plus an additional 14 small exchanges/nodes, each of which are contained entirely within the boundaries of one of the 1,189 EAs.

ABK, ABP, ABX, ABY, ACE, ACF, ACL, ACY, ADA, ADE, ADG, ADH, ADM, AND, ADR, ADT, ADY, AFD, AFE, AFN, AGA, AGH, AGL, AGY, AHA, AHC, AHH, AHM, AHO, AHS, ALD, ALE, ALS, ALW, AME, ANA, ANN, ANR, ANY, ARA, ARC, ARD, ARL, ARN, ART, ARW, ASD, ASN, ATE, ATL, ATN, ATS, ATY, AUG, AVA, AVO, AYL, BAA, BAD, BAE, BAH, BAI, BAK, BAL, BAM, BAN, BAS, BAY, BBA, BBE, BBN, BBO, BBS, BBT, BBY, BCA, BCE, BCG, BCH, BCK, BCL, BCN, BCR, BCS, BCY, BDA, BDB, BDY, BEG, BEN, BER, BES, BEY, BFD, BFN, BFO, BFR, BFT, BGA, BGE, BGH, BGL, BGN, BGR, BGS, BGT, BGW, BGY, BHE, BHG, BHH, BHL, BHM, BHN, BHR, BHS, BHT, BHY, BIB, BIG, BIN, BIR, BIT, BIY, BJD, BKA, BKD, BKG, BKN, BKR, BKS, BKT, BLC, BLD, BLE, BLF, BLG, BLH, BLL, BLN, BLO, BLR, BLS, BLT, BLV, BLX, BLY, BMA, BMD, BME, BMH, BML, BMN, BMO, BMT, BMY, BNA, BND, BNE, BNG, BNR, BNS, BNY, BNZ, BOH, BOK, BOL, BON, BOY, BPC, BPO, BRA, BRD, BRE, BRF, BRH, BRM, BRS, BRU, BRY, BSA, BSB, BSE, BSH, BSN, BSO, BSP, BTA, BTB, BTE, BTH, BTM, BTN, BTR, BTS, BTT, BTW, BTY, BUB, BUD, BUN, BUO, BUT, BUY, BVN, BVR, BVT, BWG, BWM, BWN, BWR, BXG, BYA, BYB, BYC, BYD, BYE, BYF, BYG, BYH, BYM, BYN, BYO, BYR, BYS, BYV, BYW, BYX, CAA, CAG, CAH, CAL, CAM, CAN, CAR, CAS, CAT, CAV, CAW, CAY, CBA, CBE, CBM, CBN, CBO, CBR, CBT, CBY, CCG, CCI, CCL, CCM, CCR, CCS, CDA, CDF, CDH, CDN, CDT, CDU, CDW, CEA, CEN, CER, CFA, CFD, CFG, CFL, CFN, CFO, CFY, CGB, CGE, CGG, CGH, CGL, CGN, CGS, CGY, CHA, CHE, CHG, CHL, CHT, CHW, CHX, CID, CIG, CIM, CIN, CIS, CJN, CKA, CKE, CKN, CKO, CKS, CKW, CKY, CLA, CLB, CLC, CLG, CLL, CLO, CLR, CLU, CLW, CMA, CMK, CML, CMN, CMO, CMP, CMY, CAN, CNB, CNE, CNG, CNN, CNP, CNR, CNS, CNV, CNX, CNY, COG, COL, CON, COO, COS, COT, CPH, CPL, CPM, CPN, CPO, CPT, CPW, CRC, CRD, CRE, CRF, CRI, CRK, CRM, CRN, CRO, CRR, CRV, CRX, CRY, CSB, CSE, CSH, CSJ, CSK, CSL, CSO, CSP, CSR, CSS, CSY, CTB, CTD, CTE, CTH, CTL, CTN, CTW, CUA, CUB, CUR, CUX, CVN, CVW, CWL, CWN, CYA, CYE, CYG, CYW, DAP, DBG, DBR, DCE, DCK, DCL, DCN, DDA, DDT, DDY, DFY, DGE, DGH, DGN, DGY, DHA, DHL, DHR, DKE, DKN, DLE, DLG, DLO, DLR, DMD, DME, DMO, DMR, DMW, DNA, DND, DNM, DNN, DNR, DNV, DNX, DON, DPF, DRA, DRB, DRH, DRI, DRL, DRM, DRS, DRW, DUK, DUN, DUR, DUW, DVN, DWT, ECT, EDY, EFI, EFN, EKK, EKY, EMJ, EMN, EMV, EMY, ERS, ESK, ETN, ETW, FBD, FBO, FCA, FDR, FEH, FET, FFO, FGE, FGH, FHD, FHN, FHX, FIN, FKE, FMH, FML, FMT, FMX, FNA, FNS, FNT, FPK, FRB, FRS, FVA, FWN, FXD, FXH, FYB, GAR, GBE, GBH, GBY, GCE, GCF, GCK, GCR, GDH, GDN, GEY, GGF, GHL, GIL, GLA, GLC, GLI, GLN, GLO, GLS, GME, GMH, GMI, GMY, GNA, GNE, GNG, GNH, GNK, GNO, GNY, GRD, GRE, GRT, GSL, GSN, GSX, GTA, GTN, GTS, GUE, GUN, GVE, GWH, GWN, HBN, HCS, HCN, HDD, HFD, HFT, HKN, HLP, HMT, HOB, HOD, HPL, HRD, IBF, IBM, IGE, IGH, IHR, INC, INE, ING, INL, INM, INR, INV, INY, ISK, ISL, ISN, JKN, JNN, JSN, JTN, KAE, KAP, KAS, KBD, KBE, KBN, KBS, KCE, KCH, KCK, KCL, KCN, KCO, KCR, KCW, KCY, KDH, KDK, KDN, KDO, KDT, KDY, KEH, KEK, KEL, KEN, KEY, KFA, KFE, KGL, KGN, KGT, KGV, KGX, KHA, KHE, KHN, KIA, KIM, KIN, KIR, KKE, KKL, KKY, KLA, KLB, KLC, KLG, KLH, KLK, KLL, KLR, KLS, KLU, KLY, KMA, KMD, KME, KMG, KMK, KML, KMN, KMS, KMT, KMU, KMW, KMY, KNA, KNC, KND, KNE, KNF, KNG, KNK, KNL, KNM, KNT, KOK, KON, KOR, KQY, KRA, KRG, KRH, KRM, KRN, KRR, KRY, KSA, KSL, KSV, KTA, KTH, KTM, KTN, KTR, KTX, KUC, KVA, KVN, KYG, KYK, LAG, LAN, LAY, LBN, LBU, LCY, LDA, LDN, LED, LEP, LET, LGA, LGB, LGN, LGW, LHA, LHY, LIF, LIS, LKR, LMB, LME, LMW, LNE, LNF, LNH, LNW, LNY, LOS, LPN, LRH, LRN, LSL, LSN, LSR, LTH, LTM, LTN, LTW, LVA, LVH, LVN, LWD, LWN, LYR, MAL, MAM, MAN, MBS, MBW, MBY, MCH, MCM, MCN, MDN, MEE, MEN, MEX,

MFD, MFM, MGE, MGL, MGN, MHL, MHW, MIK, MIL, MLA, MLD, MLE, MLF, MLH, MLN, MNB, MNE, MNH, MNU, MON, MOT, MOY, MPT, MRM, MRN, MRO, MRW, MRY, MSK, MST, MTH, MTN, MTP, MUC, MUF, MUK, MUN, MUS, MVA, MVE, MVT, MYN, MYV, NAN, NAR, NBE, NBS, NCE, NCM, NCN, NGO, NHL, NMK, NMT, NNH, NOF, NOR, NPT, NRS, NRT, NRY, NSM, NTW, NWB, NWN, NWT, OBB, OGO, OGT, OLA, OLD, OLE, OLT, OME, OMH, ORM, OWN, OYG, PAN, PGN, PGO, PHB, PKW, PKY, PLL, PME, PML, PNE, PNT, PRE, PRK, PRS, PRT, PSG, PSX, PTN, PUA, PWC, PWL, PWN, QPT, QUN, RAN, RAY, RBE, RBT, RCH, RCM, RCN, RCS, RCY, RDE, RDM, RDS, RFN, RFO, RGN, RHS, RIP, RIS, RIV, RKE, RKY, RLC, RLE, RME, RMK, RMN, RMO, RMT, RNG, RNL, RNV, ROK, ROT, RPT, RPY, RRN, RRX, RSA, RSC, RSK, RSM, RSN, RSP, RST, RSY, RTN, RTO, RUN, RUY, RVD, RVK, RVN, RVY, RWD, RWH, RWN, RWR, RYN, RYX, SBH, SBR, SBY, SCF, SCK, SCL, SCN, SCT, SFN, SGH, SGN, SHE, SHL, SHR, SHY, SIL, SKB, SKN, SLE, SML, SNB, SNM, SON, SPL, STD, STH, STJ, STM, SUF, SWD, TAA, TAN, TBD, TBL, TBT, TCN, TCY, TDY, TEY, TFA, TFN, TGN, TGR, THY, TLA, TLE, TLN, TLP, TLR, TLW, TMD, TME, TML, TMN, TMO, TMR, TMY, TNE, TNH, TOO, TOR, TOW, TPN, TPR, TPY, TSK, TST, TSW, TTH, TUM, TUR, TUX, TVN, URL, VGA, VIS, VTY, WAL, WAP, WFA, WFD, WGT, WIS, WKW, WLN, WMN, WOL, WTB, WTG, WVE, WXA, YHL.

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Annex: 4 Consultation with the Competition and Consumer Protection Commission

A 4.1 Copy of letter from CCPC to ComReg, dated 13 October 2021:



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Garret Blaney
Chairperson
Commission for Communications Regulation
1 Dockland Central
Guild Street
Dublin 1, D01 E4X0

By e-mail only: dave.oconnell@comreg.ie

13 October 2021

Re: Commission for Communications Regulation Mid-term Assessment of the Regional Wholesale Central Access (WCA) Market in the State

Dear Garrett,

Pursuant to Regulation 27(1) of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011), the Commission for Communications Regulation ("ComReg") has consulted the Competition and Consumer Protection Commission (the "CCPC") with respect to ComReg's proposed Draft Decision Concerning the Mid-term Assessment of Regional Wholesale Central Access ("WCA") Market in the State (the "2021 Draft MTA Decision").

The CCPC understands that ComReg signalled to the industry in 2018 that it would not revise the relevant product market in the 2021 Draft MTA Decision and as such the CCPC observations are confined to ComReg's review of the relevant geographic market definition.

On the basis of the facts and analysis presented by ComReg, the CCPC is satisfied that there are no compelling grounds to disagree with the findings of the 2021 Draft MTA Decision which indicate that, since the publication of the 2018 Decision, conditions of competition have appreciably altered at certain identified Exchange Areas ("EAs") currently constituting the 2018 Regional WCA Market, such that they are more akin to the 2018 Urban WCA Market.

The CCPC is also satisfied that there are no compelling grounds to disagree with ComReg's conclusion that it is appropriate to alter the relevant geographic market definition, and, based

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Competition and
Consumer Protection
Commission

on a competition assessment, to also alter the findings of Eircom's Significant Market Power, and any obligations currently in force at those EAs.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ibrahim Bah', written over a horizontal line.

Ibrahim Bah

Director – Competition Enforcement and Mergers

Direct line: (+353)14703683

E-mail: ibrahimbah@ccpc.ie

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Annex: 5 European Commission Response to ComReg's Notified Draft Measures

A 5.1 Copy of letter from the European Commission to ComReg [To Be Completed].

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Annex: 6 ComReg’s Consideration of the European Commission Response to ComReg’s Notified Draft Measures

A 6.1 [To Be Completed].

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